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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060849
Party	Defendant Sunkiss Thermoreactors Inc.
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Date	10/08/2015
Attachments	Opp.Motion to Amend.100815 (Redacted).pdf(42334 bytes) Opp.Motion to Amend_Exhibit 1 (Redacted).pdf(124281 bytes) Opp.Motion to Amend_Exhibit 2 (Redacted).pdf(179801 bytes) Opp.Motion to Amend_Exhibit 3 (Redacted).pdf(280695 bytes) Opp.Motion to Amend_Exhibit 4.pdf(173583 bytes) Opp.Motion to Amend_Exhibit 5.pdf(143757 bytes) Opp.Motion to Amend_Exhibit 6 (Redacted).pdf(4378998 bytes) Opp.Motion to Amend_Exhibit 7.pdf(81822 bytes) Opp.Motion to Amend_Exhibit 8.pdf(92466 bytes) O-Cert.Svc.Opp.Motion Amend.pdf(6623 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,)
)
Petitioner,)
) Cancellation No. 92/060,849
v.	
) Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)
) Mark: SUNKISS
Registrant.)
C)

REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO FILE AN AMENDED PETITION FOR CANCELLATION

The Registrant, Sunkiss Thermoreactors, Inc. ("Registrant" or "TSI"), respectfully submits this opposition to Petitioner FINAM's ("Petitioner" or "Finam") Motion for Leave to File and Amended Petition for Cancellation ("Motion to Amend"). (Dkt. 10.1)

I. INTRODUCTION

In its Motion to Amend the Petitioner seeks to add a "new" allegation that TSI is not the rightful owner of U.S. Registration No. 1,200,333 ("the SUNKISS Mark"). The Petitioner admits that its "new" ground for cancellation is based on two agreements from 2008 and 2010 that were previously in its possession and subsequently produced by the Petitioner in discovery.

What the Petitioner fails to mention is that its desired ground for cancellation is based on an argument that ignores the existence of an intervening, and controlling, assignment of the SUNKISS Mark to the Registrant. Additionally, the ground for the Petitioner's sought-after claim is legally unsound as it (1) is legally insufficient as it flies in the face of contract law and (2) is futile and cannot be asserted against the SUNKISS Mark because the Board lacks

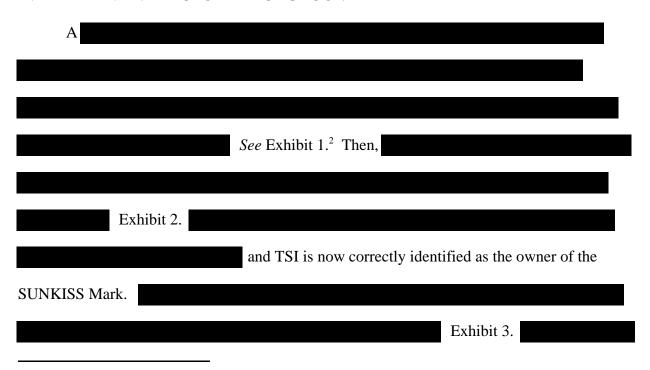
¹ Petitioner's Motion to Amend was filed both under seal (Dkt. 10) and publicly with redactions (Dkt. 11). TSI's reference to the Motion will all be to the full, sealed version submitted as Docket Number 10.

jurisdiction over ownership of a 33-year-old registration. Also, the Petitioner's motion is brought in bad faith for dilatory tactics and after an undue delay, all to the prejudice of TSI.

The Petitioner has also consistently offered vague explanations of its legal theories or flat out "shifted" them since TSI first attempted to understand the Petitioner's attacks on the SUNKISS Mark.

The Petitioner's Motion to Amend should be denied because the Petitioner's "new" ground for cancellation is based entirely on documents it already had in its position.

II. RELEVANT FACTUAL BACKGROUND



² Despite relying heavily on this and another agreement and citing these agreements in its proposed amended petition, the Petitioner never provided copies to the Board. TSI therefore submits copies of the relevant agreements.

TSI notes each of these agreements, except for the country-specific assignments, was produced by the Petitioner only in French. The Petitioner later provided an allegedly certified English translation of the Allege Members and Stranslation. However, no production numbers were affixed to the translation, there was no actual certification, and there is at least one glaring error in the translation in that it invents the date that TSI executed the agreement. Therefore, TSI objects to this translation as not being a proper and authentic certified English translation. However, since it is the only English version provided by the Petitioner to date, TSI submits it as part of Exhibit 1 for purposes of this opposition only.

On June 15, 2015, TSI propounded a focused set of interrogatories and document requests on the Petitioner requesting the factual bases for the Petitioner's assertions in the Petition to Cancel. *See* Composite Exhibit 4. On August 10, 2015, the Petitioner provided its responses which relied exclusively on its document production. *See* Composite Exhibit 5. The documents produced by the Petitioner included

See Exhibits 1, 2, and 3. The only other documents produced by the Petitioner were e-mail correspondence in French between and TSI (or its licensee Ayotte Techno-Gaz, Inc.) and documents that were initially produced by TSI with its initial disclosures.³ Composite Exhibit 6.

More than a month passed between the Petitioner's discovery responses and its ill-advised Motion to Amend. However, on August 28, 2015, in-between these other events, counsel for the Parties had a telephone call. During this call TSI was alerted to the fact that the Petitioner had a theory of "lack of ownership" of the SUNKISS Mark. TSI noted that the Petitioner had only pled abandonment, and TSI did not agree to try this theory in this proceeding. *See* Exhibit 7.

³ The Petitioner did not make a production with its initial disclosures. Therefore, the documents produced on August 10, 2015, were the first production by the Petitioner.

III. PETITIONER'S MOTION TO AMEND SHOULD BE DENIED

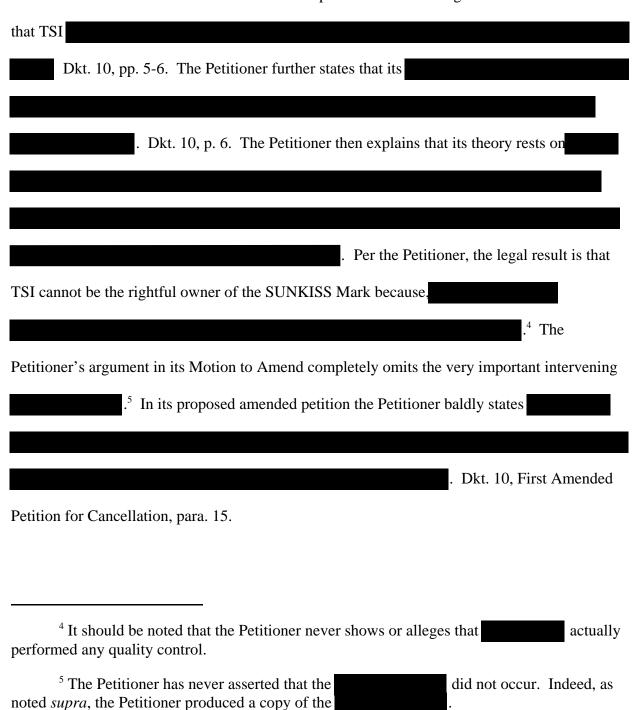
A. Petitioner's "New" Ground for Cancellations Is Legally Insufficient

The Board should deny the Motion to Amend because the Petitioner's "new" ground for cancellation is legally insufficient and would serve no useful purpose. TBMP 527.02; see also Polaris Industries, Inc. v. DC Comics, 2000 TTAB LEXIS 816, *4, 59 U.S.P.Q.2d 1798 (T.T.A.B. Nov. 30, 2000) (citing Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937 (Fed. Cir. 1990)); Giersch v. Scripps Networks Inc., 85 U.S.P.Q.2d 1306, 1309 (T.T.A.B. 2007) (proposed amendments were denied as serving no useful purpose since the proposed amendments were facially unsupported); Hurley International L.L.C. v. Volta, 82 U.S.P.Q.2d 1339, 1341 (T.T.A.B. 2007); Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc., 62 U.S.P.Q.2d 1857, 1858 (T.T.A.B. 2002) (proposed amended pleading denied because the Board had no jurisdiction over issues arising under state law), aff'd, 300 F.3d 1333, 66 U.S.P.Q.2d 1811 (Fed. Cir. 2003); Leatherwood Scopes International Inc. v. Leatherwood, 63 U.S.P.Q.2d 1699, 1702-03 (T.T.A.B. 2002) (proposed amended pleading of abandonment legally insufficient and leave to amend denied as futile where opposer failed to include allegation that mark had lost all capacity to act as a source indicator for applicant's goods); Trek Bicycle Corp. v. StyleTrek Ltd., 2001 TTAB LEXIS 841, 64 U.S.P.Q.2d 1540, 1541-42 (T.T.A.B. Dec. 20, 2001) (proposed pleading of dilution legally insufficient and delay in moving to amend resulted in no leave to re-plead); Phonak Holding AG v. ReSound GmbH, 56 U.S.P.Q.2d 1057, 1059 (T.T.A.B. 2000) (motion to add counterclaim denied where allegation was insufficient to state claim); Institut National des Appellations d'Origine v. Brown-Forman Corp., 47 U.S.P.Q.2d 1875, 1896 (T.T.A.B. 1998) (motion to amend and new claim denied where opposers' new claim could not prevail as a matter of law); Commodore Electronics Ltd. v. CBM Kabushiki Kaisha,

26 U.S.P.Q.2d 1503, 1506 (T.T.A.B. 1993); and *CBS Inc. v. Mercandante*, 23 U.S.P.Q.2d 1784, 1786-87 (T.T.A.B. 1992).

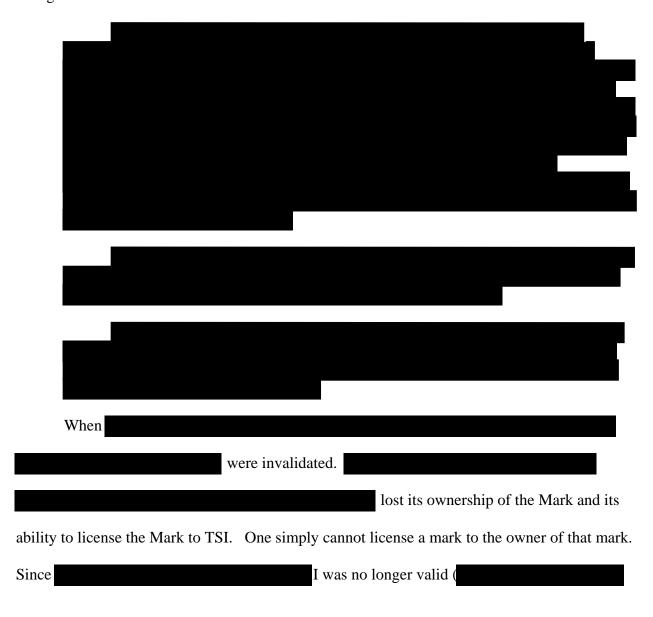
1. Petitioner's "New" Ground Is Contrary to Contract Law, Legally Insufficient, and Futile

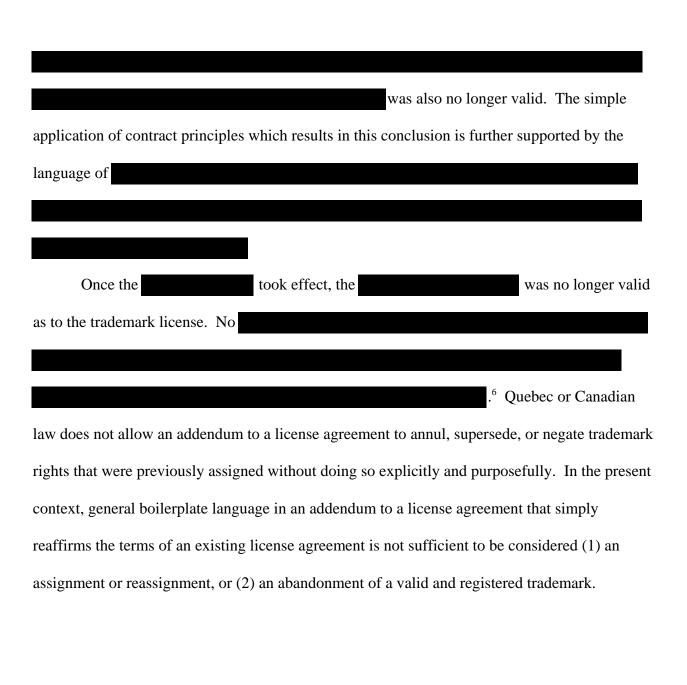
In its Motion to Amend the Petitioner explains that its "new" ground for cancellation is



This creative allegation is legally unjustifiable. What the Petitioner alleges is that the is rendered meaningless and/or void *ab initio*. It is unclear which. Such a statement flies in the face of basic contract principles and a reading of the reality is that the Petitioner's "new" ground for cancellation is legally unfounded and futile.

At the risk of being repetitive, TSI provides a breakdown of the timing and impact of the agreements relevant to the Petitioner's Motion to Amend.





The Petitioner's unartful assertion that somehow remained the "owner" of the SUNKISS Mark after is also legally futile as a ground of cancellation. The USPTO has long recognized that an exclusive distributor of goods for a foreign "owner" can own a registered trademark in the United States if there is an assignment of the owner's rights in the mark to the United States together with the business and goodwill appurtenant thereto. *See* TMEP 1201.06(a). Of course, the is precisely the type of document that satisfies this requirement.

2. Petitioner's Unexplained Extraneous Allegations Fail to State a Claim

TSI further notes that while the Petitioner fails to mention them in its Motion to Amend, the Petitioner's proposed amended petition includes two more allegations related to the various agreements – but are not themselves allegations that TSI "never owned" the SUNKISS Mark:



Dkt. 10, First Amended Petition for Cancellation, paras. 19-20.

The Petitioner never explains in its proposed amended petition, or Motion to Amend, how ... Additionally, the Petitioner never explains how ... Additionally, the Petitioner never explains how ... Nor does the Petitioner explain why its rights in Canada have any bearing on a U.S. registration. These two paragraphs offer zero notice of a legally cognizable theory. If the paragraphs should be permitted, TSI will have no idea what is really being asserted against it, let alone what elements make up the "theories" or how to defend against them. The Board should strike paragraphs 19 and 20 for being improperly pled and failing to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6) and TBMP 503. Nor should the Petitioner be afforded another chance to amend, since the one thing that is clear is that regardless of what the 'Petitioner's theory *du jour* is, that theory is based on a long-standing knowledge of TSI and earlier agreements regarding TSI and the SUNKISS Mark.

All of the Motion to Amend and the proposed amended petition are directed to TSI's agreements with the Petitioner has identified as a "third-party." *See* Dkt. 10, p. 6, and First Amended Petition for Cancellation, para. 13.

Since the only articulated basis for the Petitioner's "new" ground for cancellation is based on an inherently legally flawed and unsupportable theory, the requested amendment is futile and should be denied.⁸

B. Petitioner's "New" Ground Is Futile and Not Available against the 33-Year-Old SUNKISS Mark

In addition to being fatally flawed under the law, the Petitioner's "new" ground for cancellation is also prohibited. The case law is clear that questions of ownership are **not permissible** grounds for a petition to cancel a registration more than five years old. 15 U.S.C.

§ 1064(3); see also Treadwell's Drifters Inc. v. Marshak, 18 U.S.P.Q.2d 1318, 1320 (T.T.A.B.

1990) (petitioner's allegations that the registrant lacked ownership and that the registration was void ab initio failed "because the Board is without authority to resolve the ownership question [as t]he registration sought to be cancelled [was] over five years old"); Kemin Industries, Inc. v.

Watkins Products, Inc., 192 U.S.P.Q. 327, 328-29 (T.T.A.B. 1976) (the Board lacked jurisdiction to decide the question as to whether the manufacturer or distributor of a product was the rightful owner of a registered mark since the registration had issued more than five years prior to the filing of the petition to cancel); and Health Net v. Mid-America Health Network, Inc., 1999

TTAB LEXIS 289, *9 (T.T.A.B. June 29, 2009) ("to the extent that applicant has attempted to raise the ownership issue with respect to opposer's registration, the issue cannot be considered by the Board because the registration is over five years old").

⁸ The Petitioner's Motion to Amend appears confused at times, discussing its purported question of ownership, assertions of naked licensing and abandonment all in one breath. *See* Dkt. 10, pp. 2, 5, and 6. This suggests that the Petitioner itself is uncertain as to what factual and legal theories it will try to pursue, and the Petitioner may attempt to shoehorn this same argument into its pled abandonment theory. Therefore, TSI respectfully requests that, even if the Board denies the Motion to Amend for other reasons, it also rule on whether the existence of the negates the Petitioner's theory.

Here, the Mark was registered in 1982 and has been registered for more than 33 years. There is no existing law that supports the Petitioner's legal theory that it may pursue a claim that TSI is not the "rightful owner" of the SUNKISS Mark. Since the Petitioner many not question the ownership of the SUNKISS Mark, the amendment it seeks would be futile, and the Motion to Amend should be denied.

C. Petitioner's Motion to Amend Should Further Be Denied for Equitable Reasons

The Petitioner's Motion to Amend should further be denied due to the Petitioner's bad faith, dilatory tactics, and undue delay in bringing its Motion to Amend, all of which would result in undue prejudice to TSI. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

"Any party who delays filing a motion for leave to amend its pleading and, in so delaying causes prejudice to its adversary, is acting contrary to the spirit of Rule 15(a) and risks denial of that motion." *ChaCha Search, Inc. v. Grape Tech. Group, Inc.*, 2012 TTAB LEXIS 490, *3, 105 U.S.P.Q.2d 1298 (T.T.A.B. Dec. 27, 2012) (citing *Media Online Inc. v. El Clasificado Inc.*, 2008 TTAB LEXIS 52, *7, 88 U.S.P.Q.2d 1285, 1286 (T.T.A.B. Sept. 29, 2008). As explained by the Board in *Media Online Inc.*:

The Board also finds that respondent would suffer prejudice if petitioner is permitted to add the claims at this juncture. In this particular instance, petitioner did not claim that it learned of these newly asserted claims through discovery or was otherwise unable to learn about these new claims prior to or shortly after filing its first complaint. Petitioner therefore had ample time to file a motion for leave to amend its pleading at an earlier stage in the proceeding. It is incumbent upon petitioner to identify all claims promptly in order to provide respondent with proper notice. Otherwise, allowing piecemeal prosecution of this case would unfairly prejudice respondent by increasing the time, effort, and money that respondent would be required to expend to defend against petitioner's challenge to its registration.

2008 TTAB LEXIS 52, at *7 (motion to amend filed seven months after the petition to cancel was filed); *see also Trek Bicycle Corporation*, 2001 TTAB LEXIS 841, 64 U.S.P.Q.2d 1540

(opposer unduly delayed in seeking to add a claim when its motion for leave to amend was filed eight months after its notice of opposition was filed, the claim was based on facts known prior to the start of the case, and the opposer offered no explanation for delay); and *Capital Speakers Inc.* v. Capital Speakers Club of Washington D.C. Inc., 41 U.S.P.Q.2d 1030 (T.T.A.B. 1996) (finding that the Board may deny a motion to amend when the movant knew, or should have known, of the facts upon which the amendment is based when the original pleading was filed and the movant offers no excuse for the delay).

Here, the Petitioner's Motion to Amend is based entirely on documents that the

Petitioner admits were already in its possession and were not discovered by the Petitioner
through discovery. The Petitioner offers no reason whatsoever for its delay but, rather, attempts
to assert a lack of prejudice on TSI because discovery is not closed. However, once more, this is
not an accurate description of the relevant facts. The relevant facts are:

February 6, 2015: The Petitioner files its petition to cancel offering only amorphous claims of abandonment. Dkt 1.

June 15, 2015: TSI propounds focused discovery requests in an effort to understand the factual bases for the Petitioner's allegations of abandonment. *See* Exhibit 4.

August 10, 2015: The Petitioner provides only documents in response, including only the documents it now relies upon to support its "new" grounds for cancellation, correspondence between and TSI's licensee, and documents TSI produced to evidence its ongoing use of the SUNKISS Mark. *See* Exhibits 1, 2, 3, 5, and 6.

August 28, 2015: Counsel for the Parties discussed discovery issues, among other items. It was only during this call that TSI first understood the Petitioner's theories, one of which (ownership) was not pled. *See* Exhibit 7.

September 18, 2015: The Petitioner suddenly files its Motion to Amend. Dkt. 10.

The Petitioner has consistently hidden or shifted its theories attacking the SUNKISS Mark.

Additionally, the Petitioner has been dumping excessive discovery requests upon TSI that cover

a wide array of topics, many of which are irrelevant. *See* Composite Exhibit 8. It has been eight months since the Petitioner filed its petition to cancel the SUNKISS Mark, and the Petitioner's theories attacking the SUNKISS Mark are still surprisingly unclear. As a result, TSI is required to expend an excessive, and undue, amount of time and resources in not only responding to all of the Petitioner's tactics but also trying to figure out how to defend against a moving and shadowy target. To allow the Petitioner to add a new claim, one based entirely on documents that were already in the Petitioner's possession, would only exacerbate the prejudice suffered by TSI.

"It [was] incumbent upon [the P]etitioner to identify all claims promptly in order to provide [TSI] with proper notice. . . . [A]llowing [the Petitioner to continue its] piecemeal prosecution of this case would unfairly prejudice [TSI] by increasing the time, effort, and money that respondent would be required to expend to defend against [the P]etitioner's challenge to its registration." *Media Online Inc.*, 2008 TTAB LEXIS 52, at *7.

IV. CONCLUSION

The Petitioner's Motion to Amend should be denied. The "new" grounds for cancellations sought by the Petitioner (1) are legally insufficient, (2) are futile because the Board lacks jurisdiction over questions of ownership of the SUNKISS Mark, and (3) have been brought in bad faith, for dilatory tactics, after an undue delay, and create an undue prejudice to TSI.

To assist the Parties in avoiding any unnecessary and related issues, TSI further respectfully requests that the Board address each of these reasons regardless of only needing one reason to deny the Motion to Amend.

Respectfully submitted,

October 8, 2015

Date

/s/ Rebecca J. Stempien Coyle

Rebecca J. Stempien Coyle Paul Grandinetti LEVY & GRANDINETTI P.O. Box 18385 Washington, D.C. 20036-8385 Telephone (202) 429-4560 Facsimile (202) 429-4564

Attorneys for Registrant

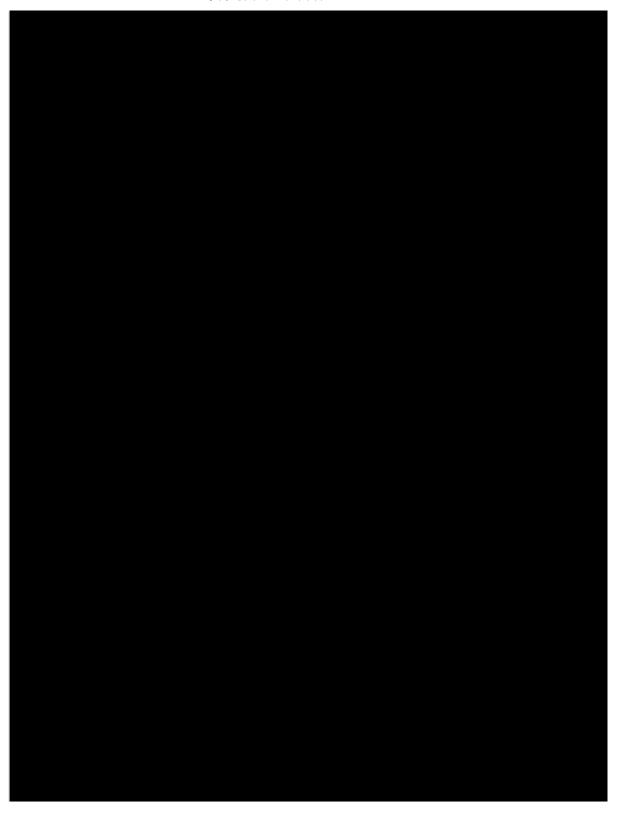
EXHIBIT 1

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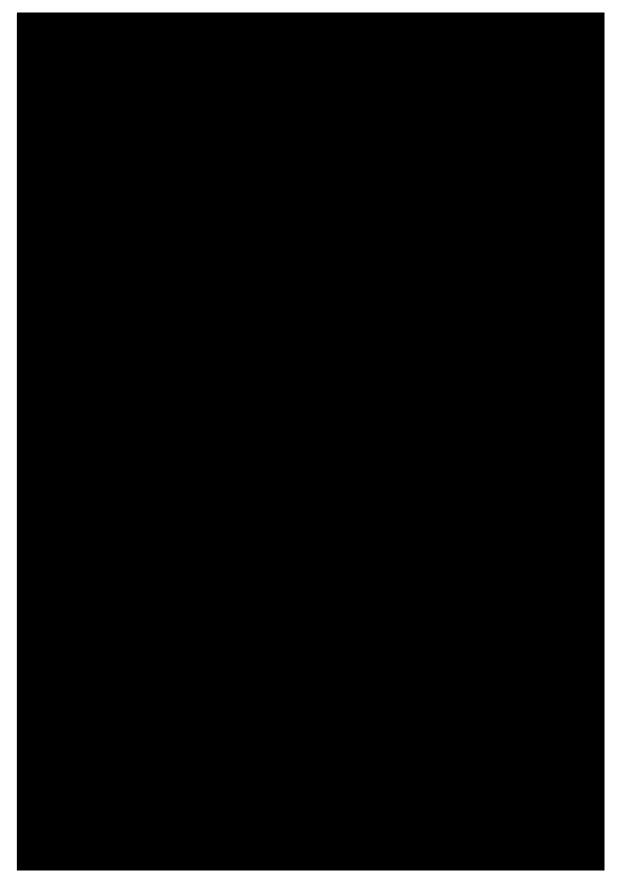
Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc.

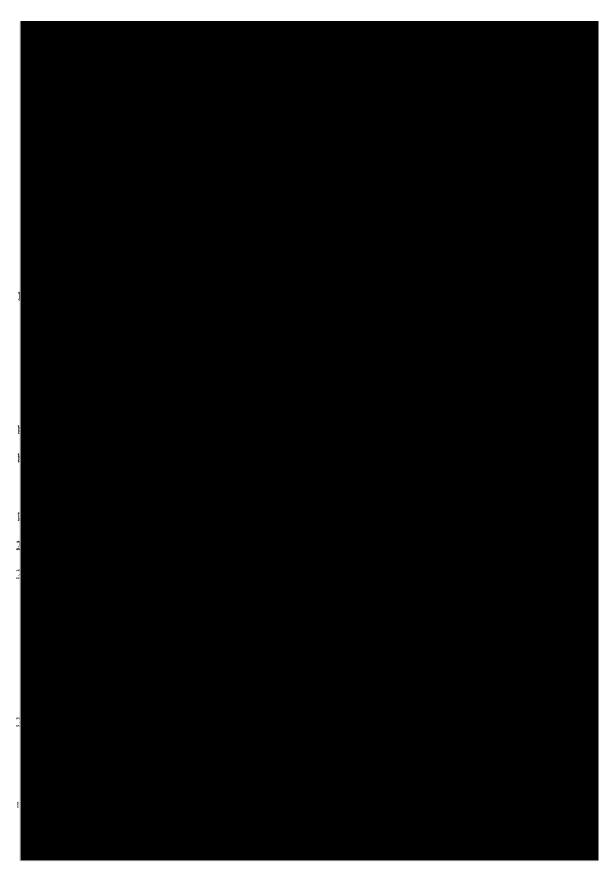
Registrant's Opposition to Petitioner's Motion to Amend

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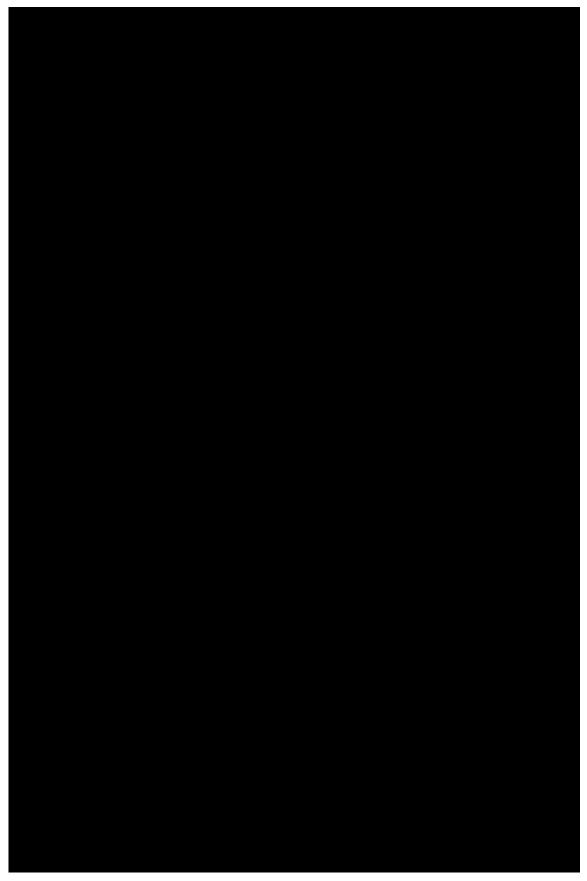


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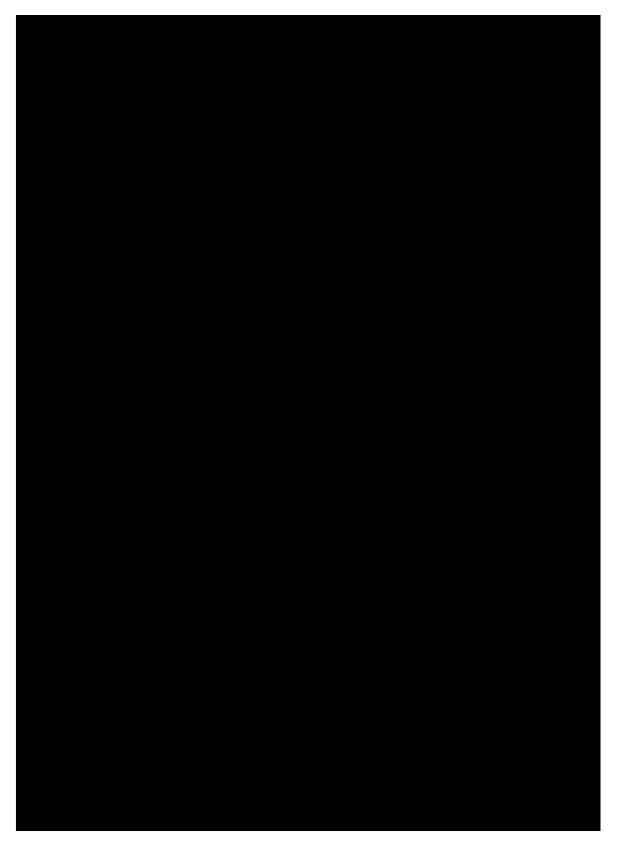




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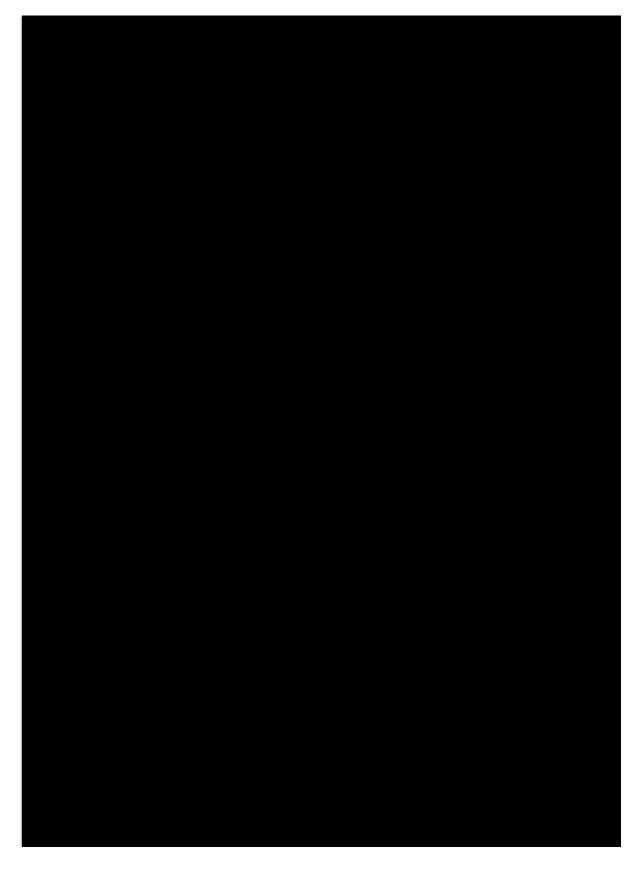








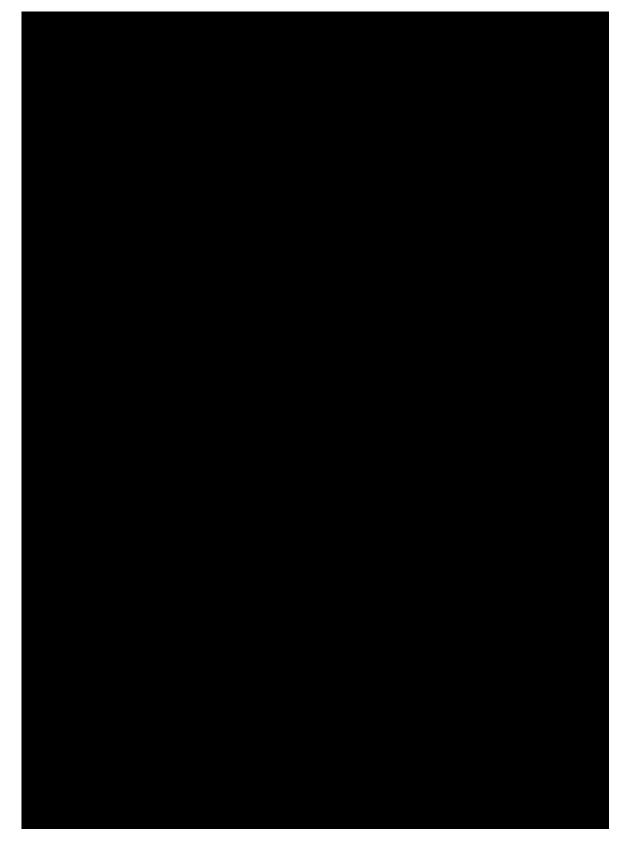


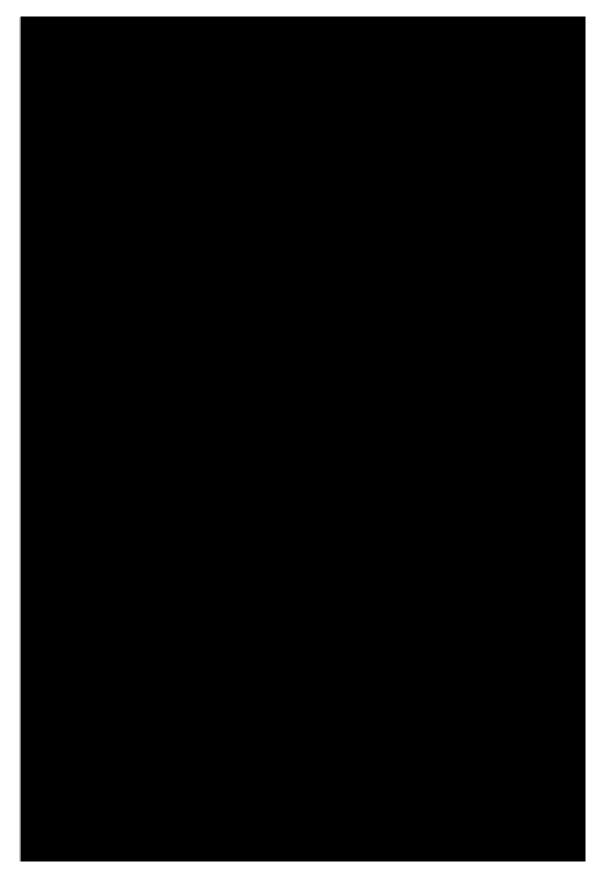




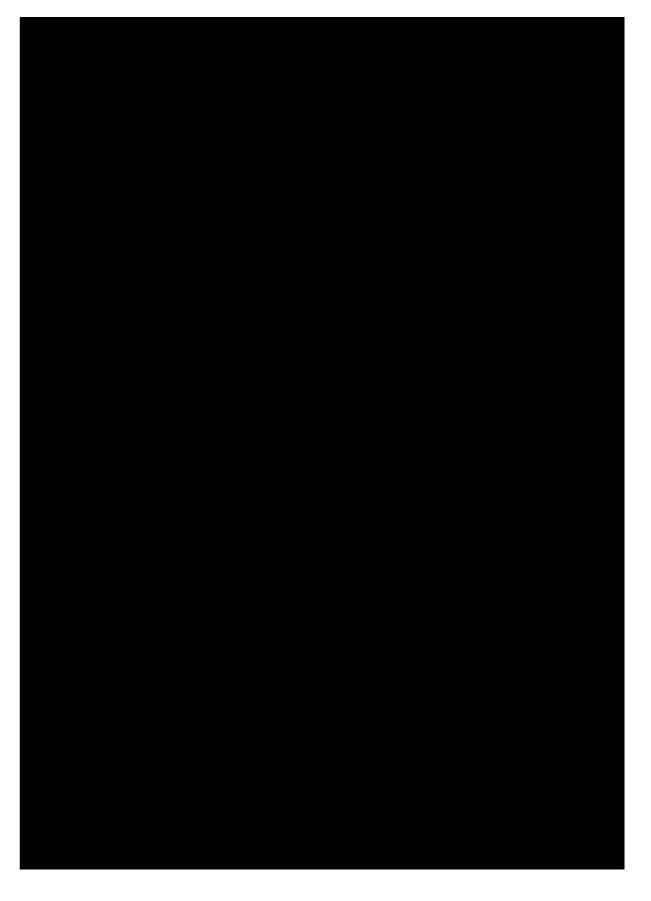










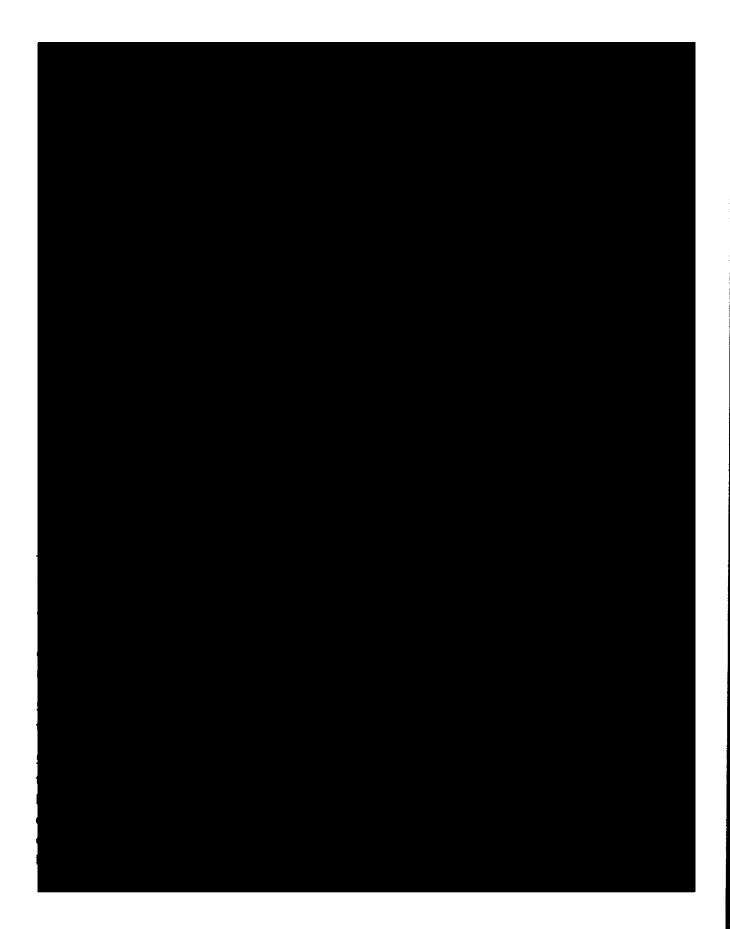


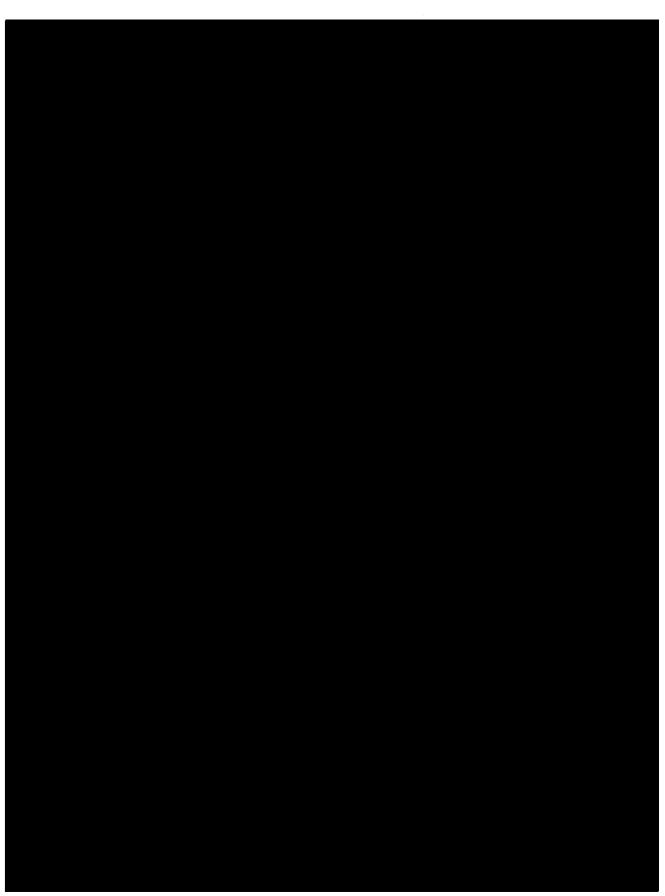


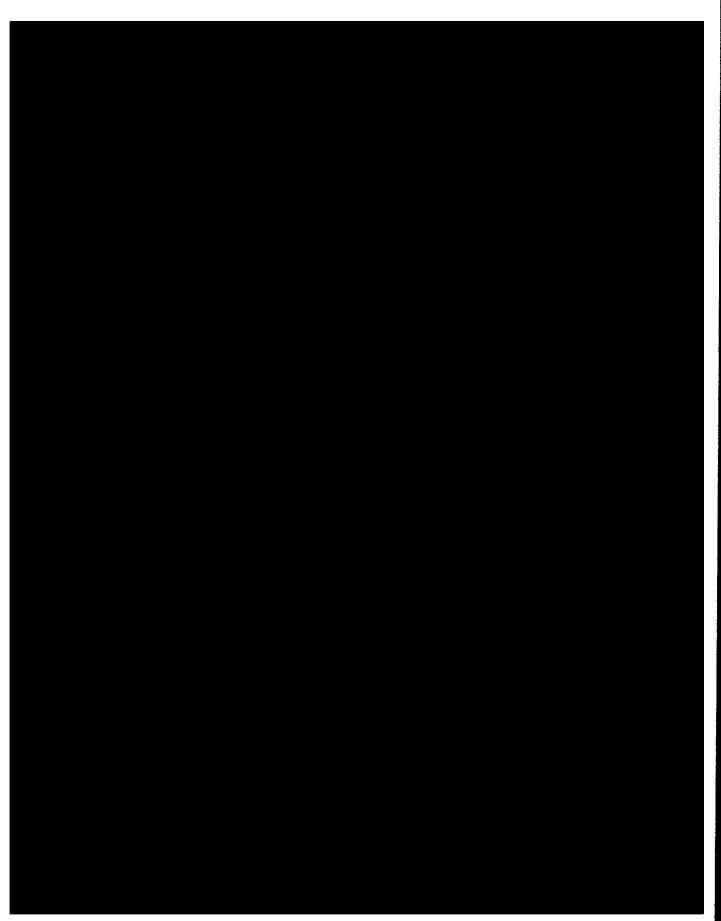


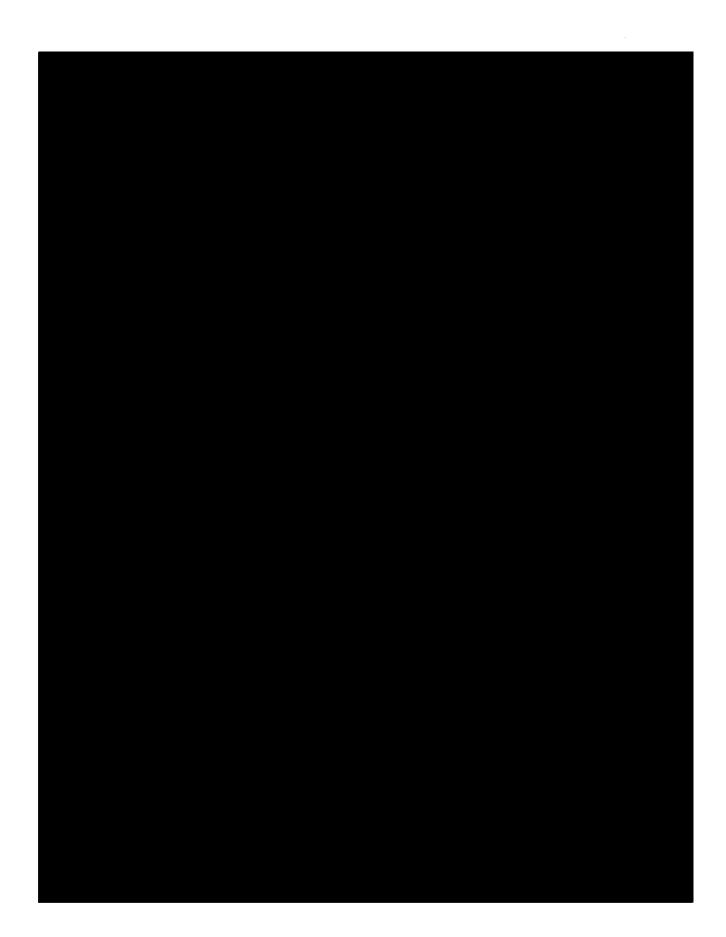


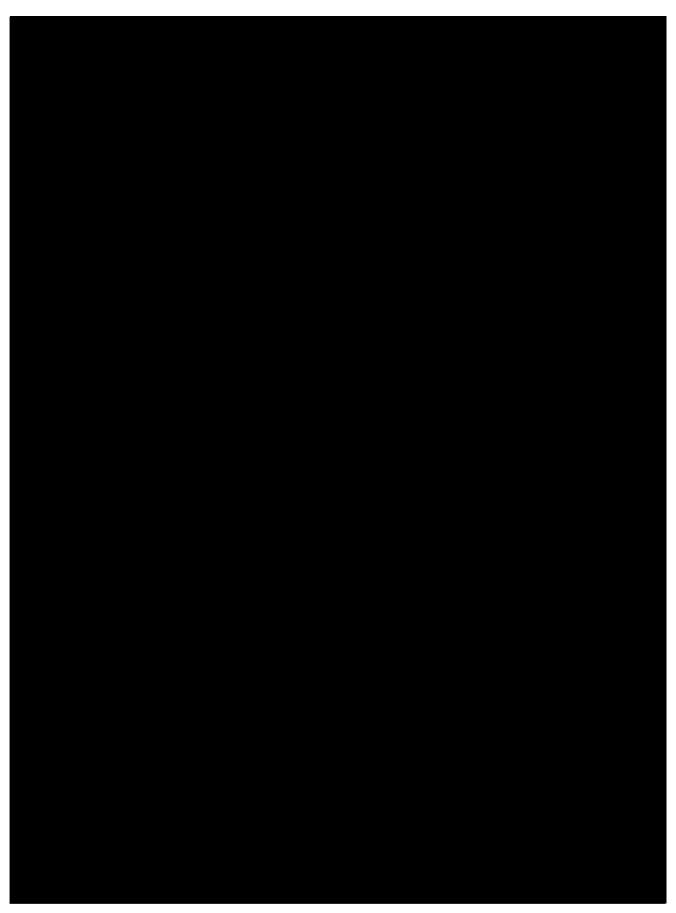




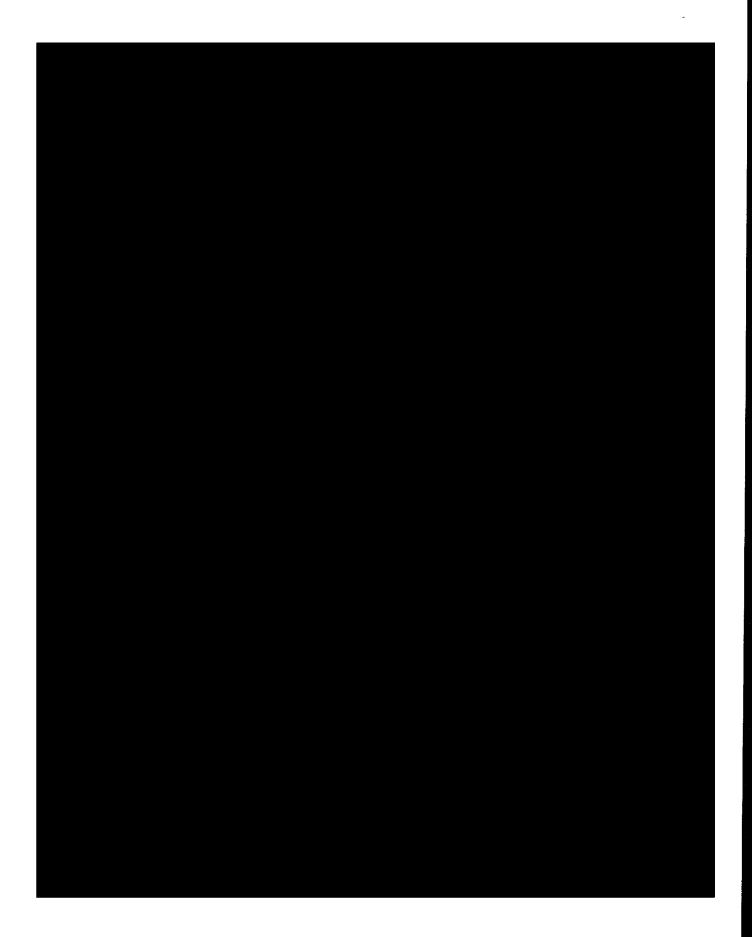
















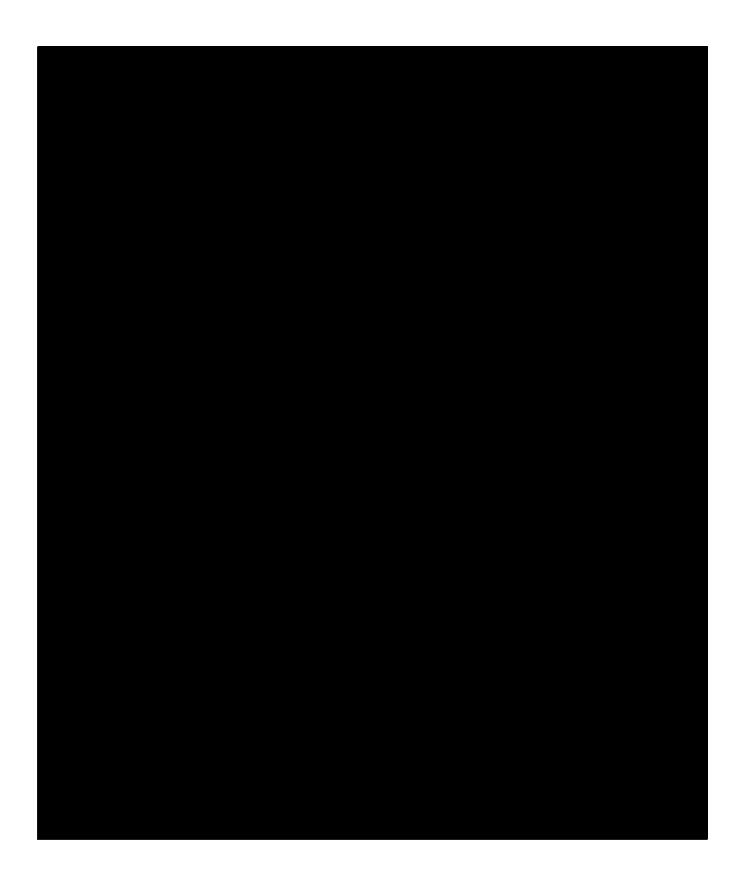


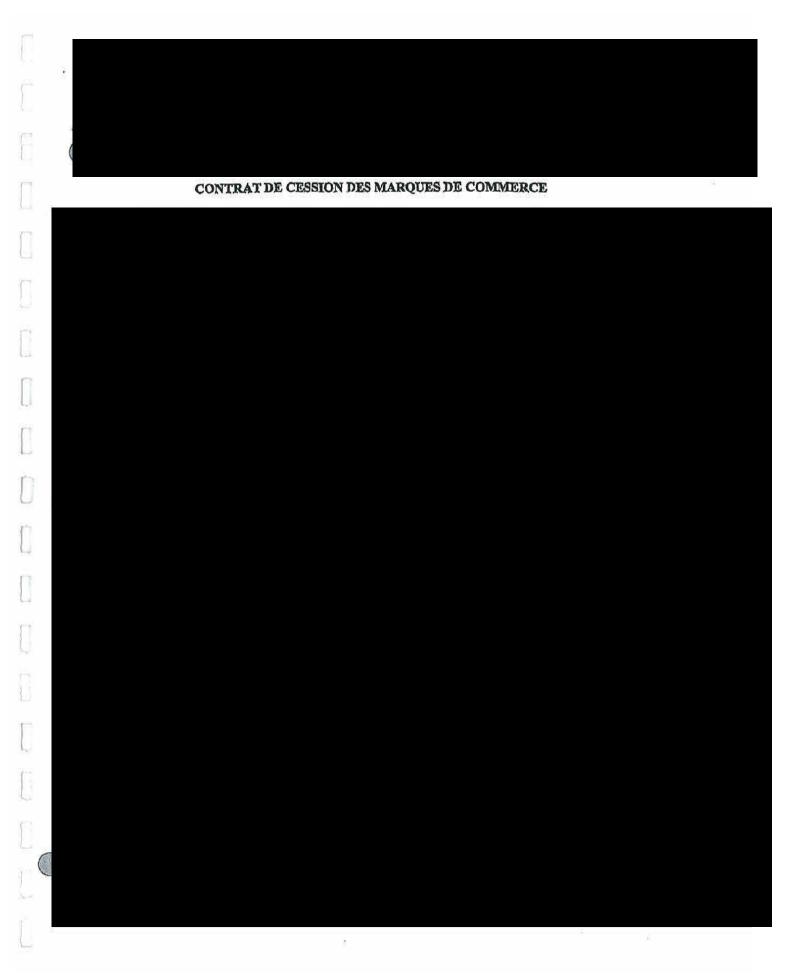


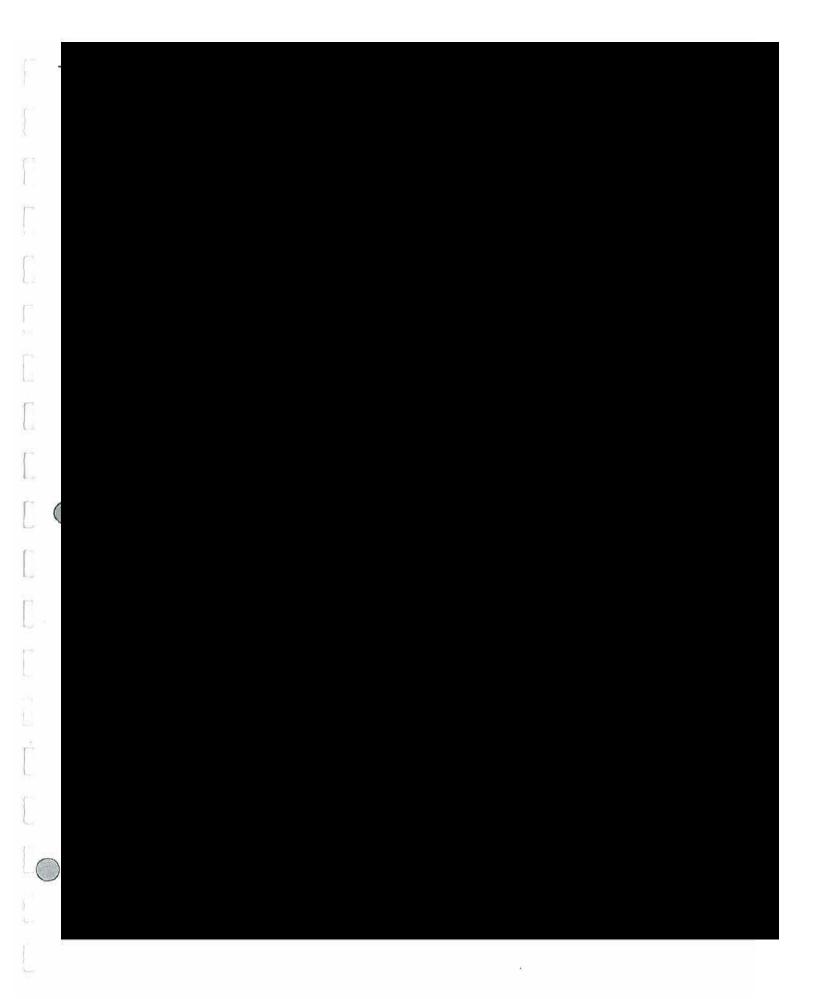
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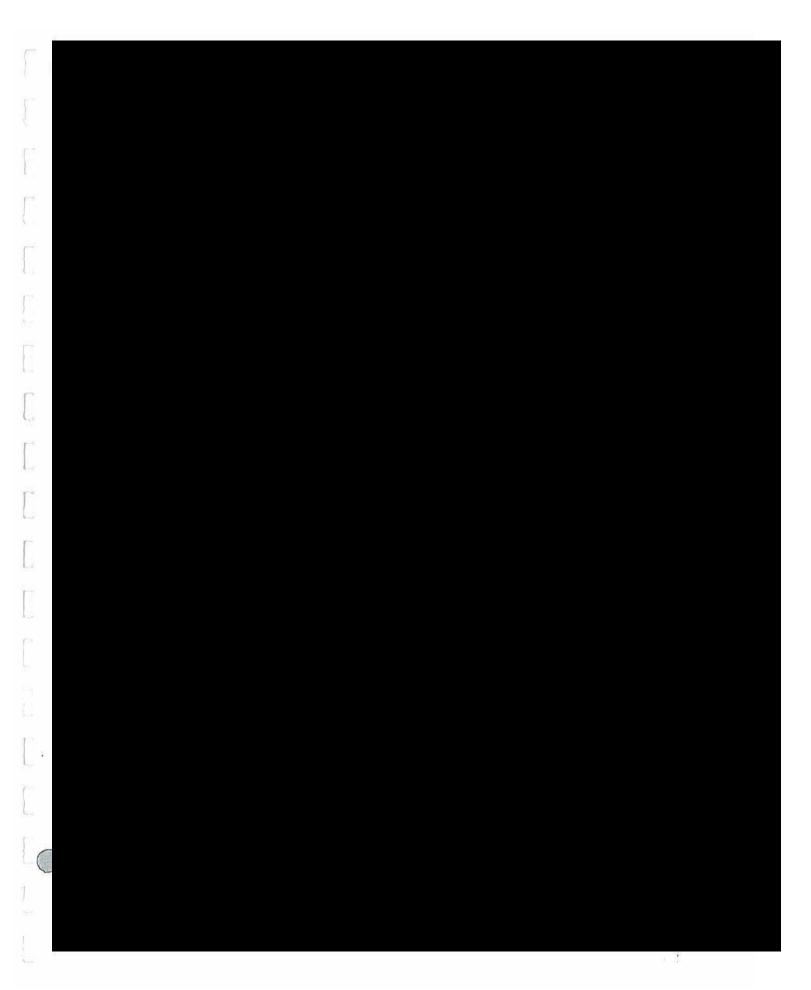
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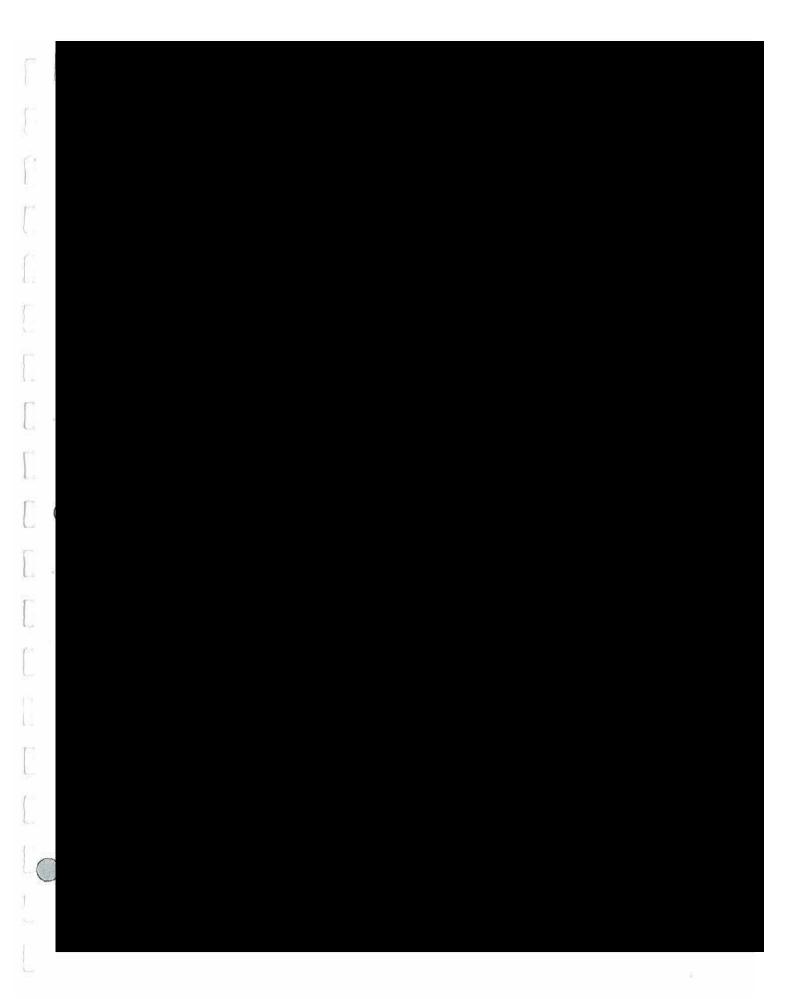
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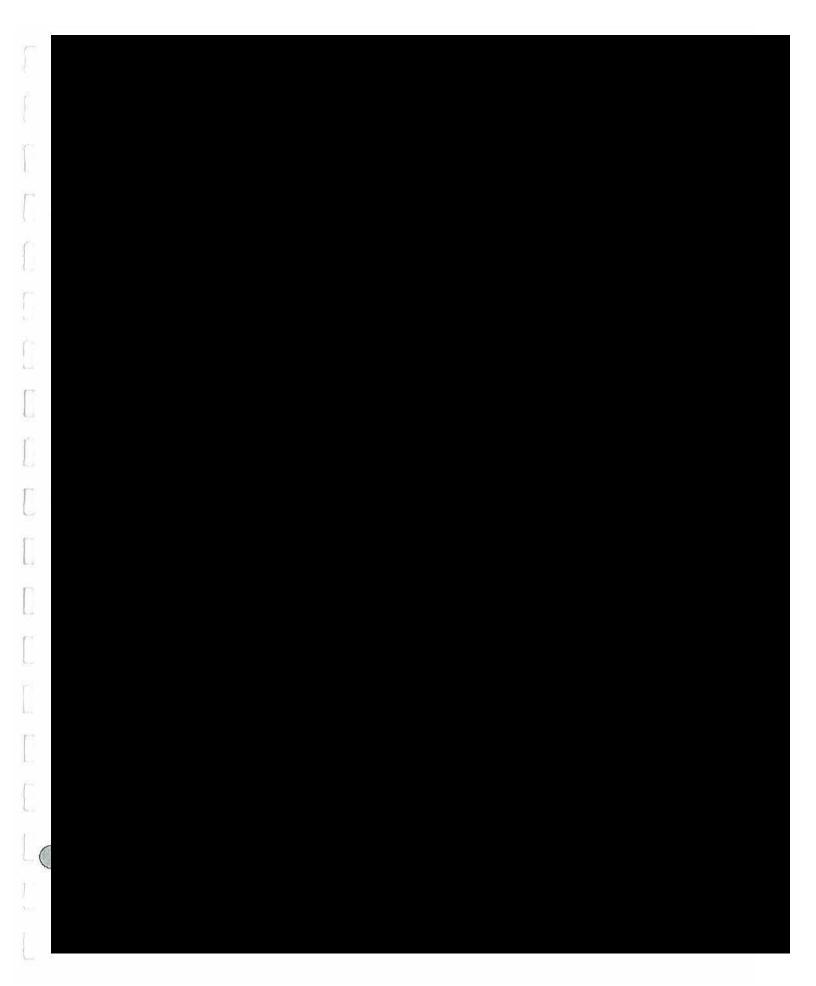
Registrant's Opposition to Petitioner's Motion to Amend











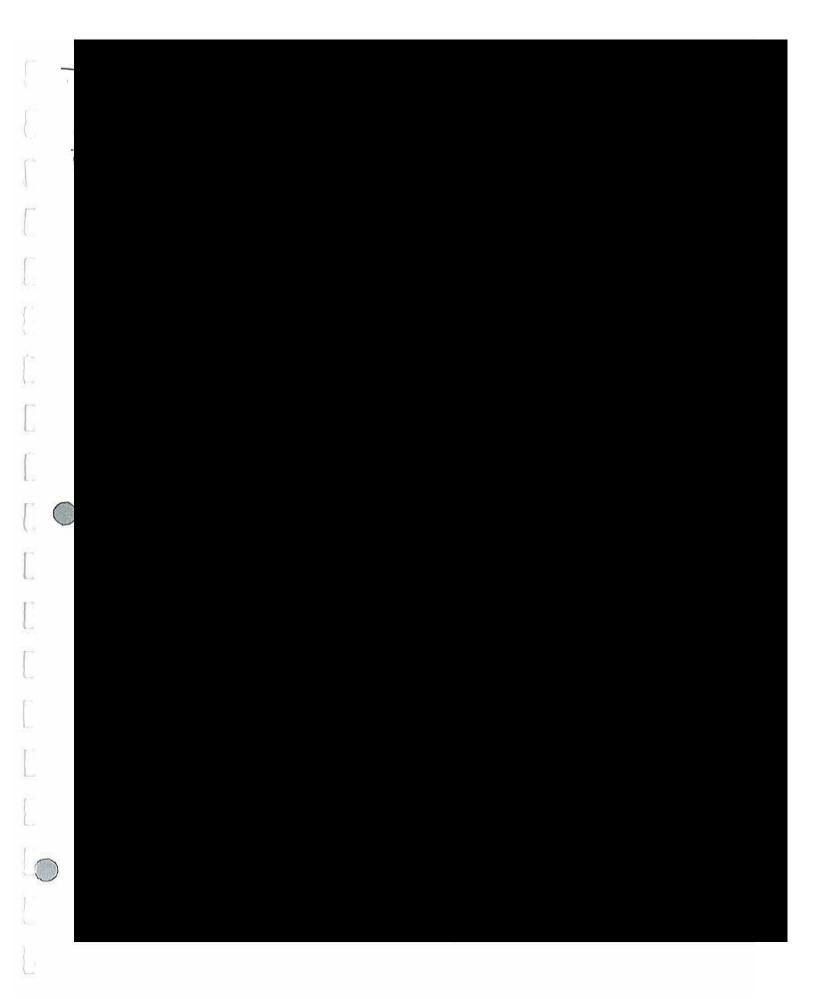


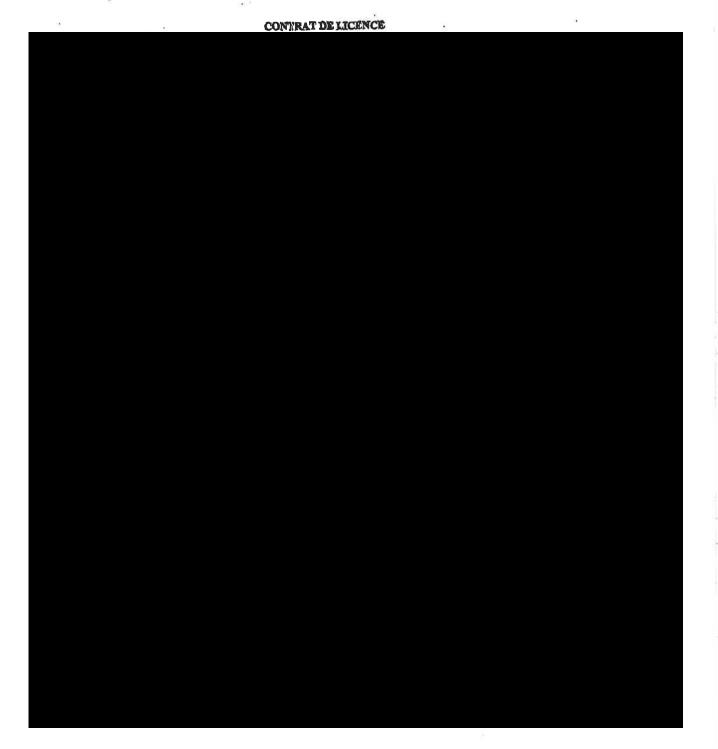
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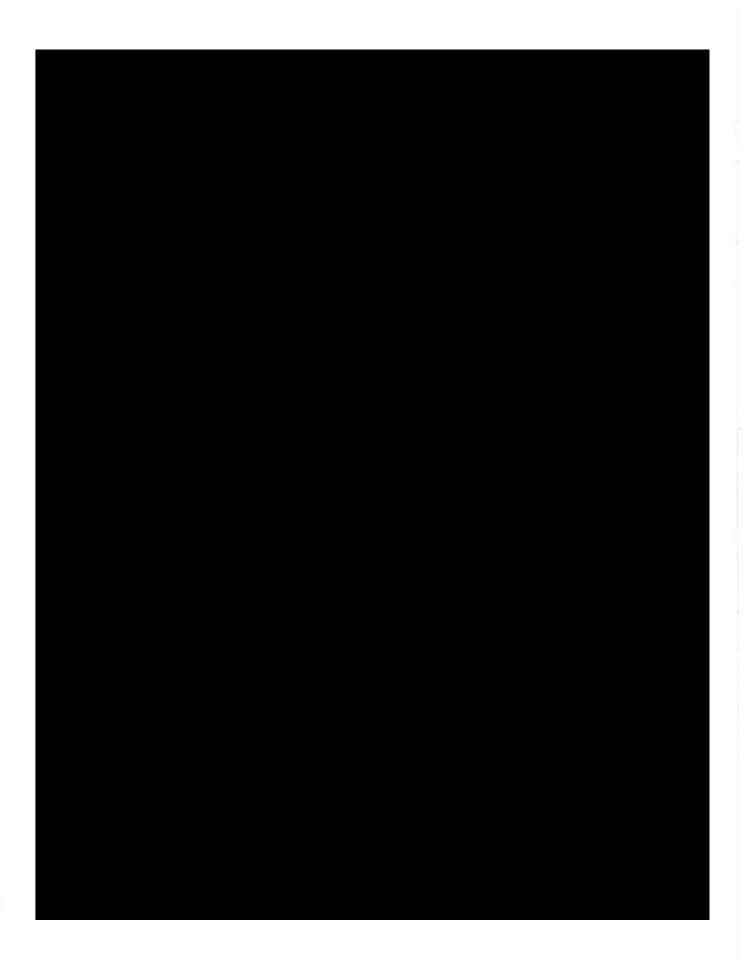
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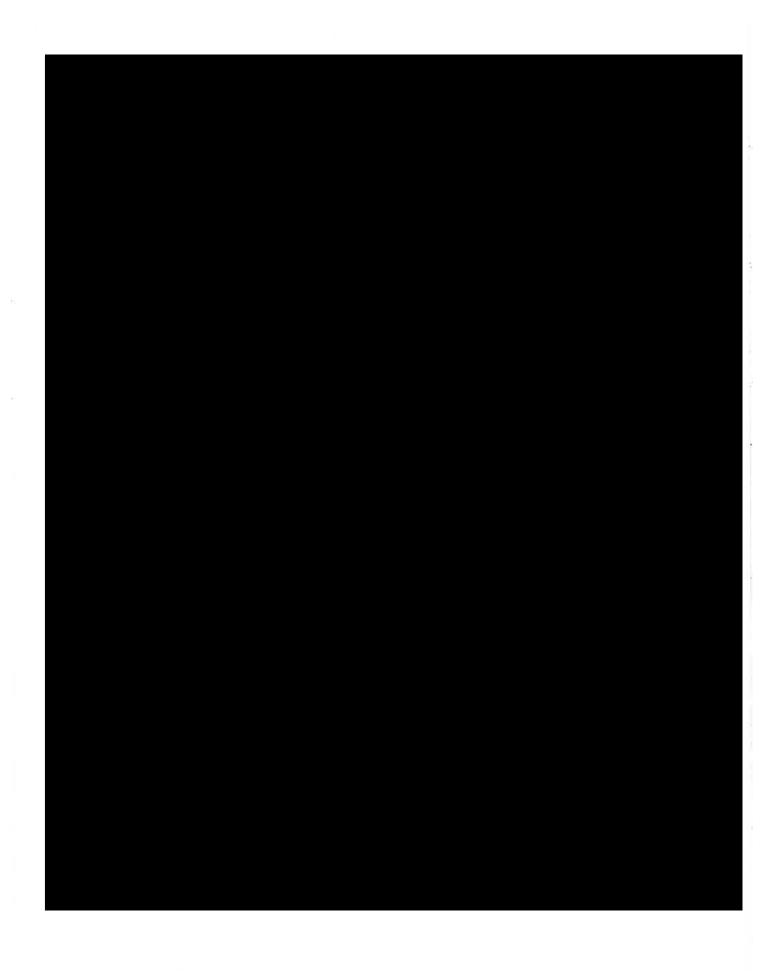












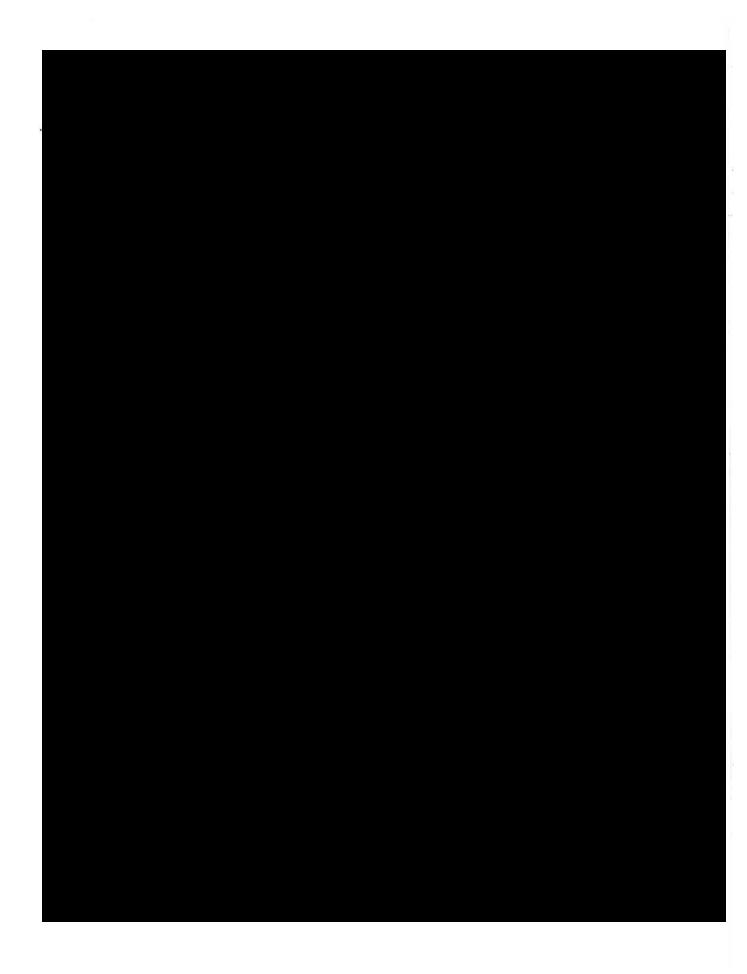




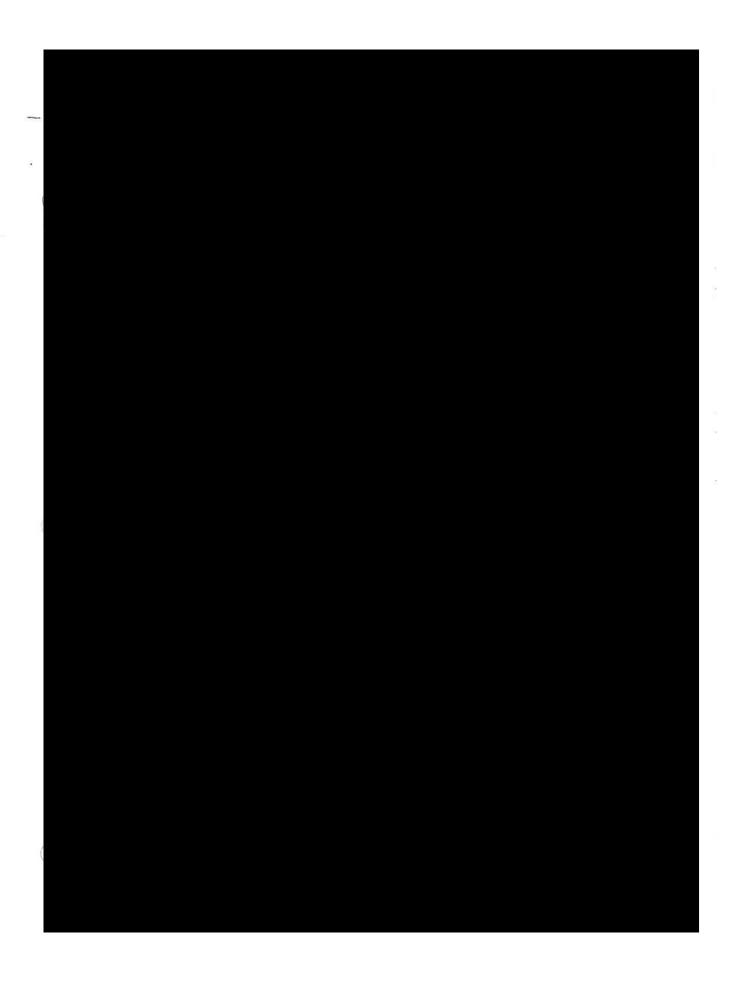


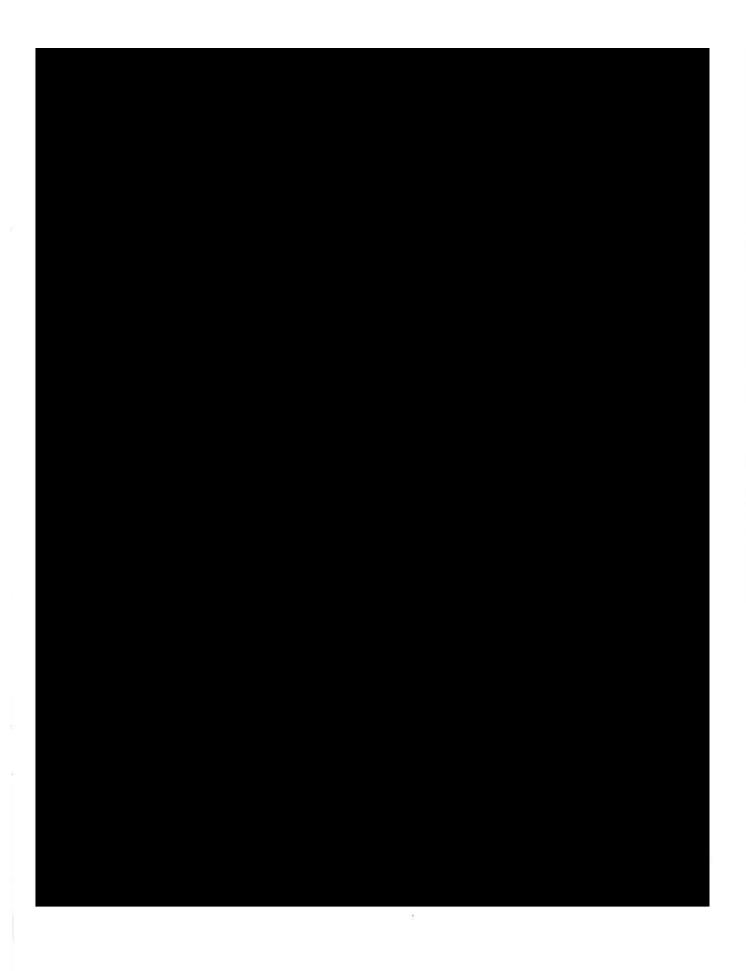














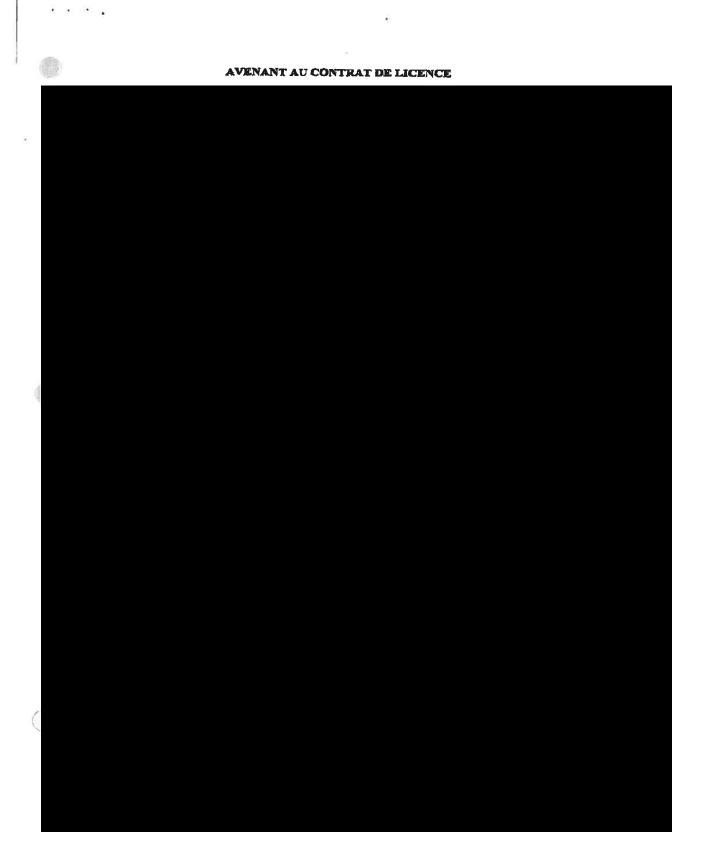




EXHIBIT 4

Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc. Registrant's Opposition to Petitioner's Motion to Amend

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,)
Petitioner,)
,) Cancellation No. 92/060,849
v.)
) Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)
) Mark: SUNKISS
Registrant.)
)

REGISTRANT'S FIRST SET OF INTERROGATORIES

The Registrant, Sunkiss Thermoreactors, Inc. ("Registrant"), by and through counsel, pursuant to FED. R. CIV. P. 33 and 37 C.F.R. § 2.120(d)(1), directs the Petitioner, FINAM, ("Petitioner"), to answer the following interrogatories separately and fully by Petitioner's officer or agent in writing and under oath not later than thirty (30) days after service hereof.

DEFINITIONS

- 1. The terms "Registrant" or "the Registrant" include Sunkiss Thermoreactors, Inc. as well as affiliated corporations or entities, including subsidiary or parent corporations, their predecessors, officers, directors, employees, agents, and representatives thereof.
- 2. The terms "Petitioner," "the Petitioner," "you," or "your" include FINAM as well as affiliated corporations or entities including subsidiary or parent corporations, its predecessors, officers, directors, employees, agents, and representatives thereof.
- 3. The terms "document" or "documents" include without limitation originals, master, and every copy of a writing that is not an identical duplicate of the original, including handwritings, and printed, typed, or other graphic or photographic matter including film or microfilm of any kind or nature, video tape, recordings (tape, disk, CD-ROM, or other) of oral

communications and other data, compilations from which information can be obtained, including computer files and electronic mail messages, in possession, custody, or control of the Petitioner or any present or former officers, employees, or agents thereof, or known by the Petitioner to exist. The term "document" or "documents" includes, without limiting the generality of the foregoing, all letters, teletypes, correspondence, contracts, agreements, notes to files, shop notebooks, reports, memoranda, flow sheets, formal or informal drawings, or diagrams, calendar or diary entries, memoranda of telephone or personal conversations or of meetings or conferences, studies, reports, interoffice communications, price lists, bulletins, circulars, statements, manuals, summaries or compilations, minutes of meetings, maps, charts, graphs, order papers, articles, announcements, books, catalogs, records, tables, books of accounts, ledgers, vouchers, analyses, or statistical data, ALFD or BATF filings, labels, or containers.

- 4. The terms "person" or "persons" include your company and, without limitation, individuals, associations, companies, divisions, corporations, partnerships, trusts, joint venture and any business entity associated with your company.
- 5. The term "plan" includes proposals, recommendations, analyses, outlines, or studies, whether or not finalized or authorized, in addition to those already implemented.
 - 6. The terms "and" and "or" shall have both conjunctive and disjunctive meanings.
- 7. The term "oral communications" shall mean any utterance heard by any other person, whether in person, by telephone, or otherwise.
- 8. The term "control" shall mean the authority of the individual to direct the management or policies of any person, entity, association, firm, or corporation.

- 9. The terms "related to" or "relating to" shall mean directly or indirectly mentioning or describing, pertaining to, being connected with, or reflecting upon a stated subject matter.
- 10. "Trademark," "service mark," "mark," or "name" shall mean any words and/or designs used by any persons or entities to identify their products, their services, or their business identity.
- 11. For purposes of these interrogatories, "Registrant's Mark" shall mean the mark SUNKISS identified in Registration Number 1,200,333.
- 12. For purposes of these interrogatories, "Registrant's Goods" shall mean the goods identified in Registration Number 1,200,333.
- 13. The term "in commerce" shall have the same meaning as that defined in 15 U.S.C. § 1127.
- 14. The term "identify" as used herein in connection with a "document" or "documents" means:
- (a) Furnish the name and date of the document (and if not dated, the approximate date), the date the document was prepared, the date the document was sent, the number of pages comprising the document, the subject matter of the document, the name, address, and title (if any) of the author of the document, the name, address, and title (if any) of the person to whom the document was addressed, the names and addresses of all persons to whom copies of the document were or have been sent, and the entity or entities with which all such persons were connected on the date of the document;

- (b) State whether the Petitioner is in the possession of the original, master, or a copy of the document and, if not in possession of the original, master, or copy, furnish the name and last known address of the custodian of the original, master, or copy;
- (c) Provide a general description of the document (i.e., letter, drawing, etc.); and
- (d) Provide a general description of the subject matter to which the document pertains.
- 15. The singular form of a term shall include the plural form of that term, and the plural form of a term shall include the singular form of that term.
 - 16. A masculine, feminine, or neuter pronoun shall not exclude the other genders.

INSTRUCTIONS

- 1. In each instance wherein an answer to an interrogatory differs between the Petitioner and any predecessor company, division, corporation, partnership, or business entity, or is applicable only to one of them, the answer shall so state, shall set forth such difference, and shall state separately all information applicable to the Petitioner and all information applicable to each such predecessor company, division, corporation, partnership, or business entity.
- 2. All objections or answers to interrogatories which fail or refuse fully to respond to any interrogatory on any claim of privilege of any kind shall:
 - (a) State the nature of the claim of privilege;
- (b) State all facts relied upon in support of the claim of privilege or related thereto;
 - (c) Identify all documents related to the claim of privilege;
- (d) Identify all persons having knowledge of any facts related to the claim of privilege; and
- (e) Identify all events, transactions, or occurrences related to the claim of privilege.
- 3. A full and complete answer to these interrogatories implies a continuing obligation to provide the Registrant with current, updated answers or documents pertaining to the subject matter of these interrogatories. This obligation is to continue throughout all subsequent proceedings of this opposition.
- 4. Where an interrogatory is considered vague, confusing, and/or unclear, the Petitioner is requested to provide the best possible answer with an explanation as to the reason

the interrogatory is believed to be vague, confusing, and/or unclear. Alternatively, the Petitioner's attorney is requested to contact the Registrant's attorney by telephone for clarification of the interrogatory.

- 5. Where an answer to an interrogatory is considered burdensome, the Petitioner is requested to provide the best possible answer with an explanation as to the reason the answer will be burdensome. Alternatively, the Petitioner's attorney is requested to contact the Registrant's attorney by telephone and/or letter for clarification of the interrogatory.
- 6. The answers, and any objections, to the interrogatories should be sent to Registrant's attorney.

INTERROGATORIES

INTERROGATORY NO. 1

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 6 that "Registrant has abandoned its rights in some or all of the goods identified in Registrations No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 1

INTERROGATORY NO. 2

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 7 that "Registrant does not currently use the SUNKISS mark on all goods identified in Registration No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 2

INTERROGATORY NO. 3

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 8 that "Registrant has not used its SUNKISS mark in commerce or on connection with some or all of the goods identified in Registration No. 1,200,333 for a period of three years."

RESPONSE TO INTERROGATORY NO. 3

INTERROGATORY NO. 4

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 9 that "Registrant has intended to abandon use of the SUNKISS mark on some or all of the goods identified in Registration No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 4

INTERROGATORY NO. 5

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 10 that "Registrant has no intention to use the SUNKISS mark on or in connection with its goods."

RESPONSE TO INTERROGATORY NO. 5

15 June 15

Date

Respectfully submitted,

Rebecca J. Stempien Coyle

Paul Grandinetti

LEVY & GRANDINETTI

P.O. Box 18385

Washington, D.C. 20036-8385

Telephone (202) 429-4560

Facsimile (202) 429-4564

Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S FIRST SET OF

INTERROGATORIES was served this date by first class mail, postage prepaid, and e-mail on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Ms. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
kmogavero@collenip.com

<u>June 15, 2015</u> Date

Paul Grandinetti

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,)
)
Petitioner,)
) Cancellation No. 92/060,849
v.)
) Reg. No. 1,200,333
Sunkiss Thermoreactors, Inc.,)
,) Mark: SUNKISS
Registrant.)
)

REGISTRANT'S FIRST SET OF REQUESTS FOR DOCUMENTS

The Registrant, Sunkiss Thermoreactors, Inc. ("Registrant"), by and through counsel, pursuant to FED. R. CIV. P. 34 and 37 C.F.R. § 2.120(d)(2), directs the Petitioner, FINAM ("Petitioner"), to produce for inspection each document and tangible thing identified as responsive to this request within thirty (30) days after service of the request by delivering the original of each such document and thing to the office of the Registrant's counsel for copying by the Registrant's counsel and also indicating to which request each such document and tangible thing is responsive.

DEFINITIONS

- 1. The terms "Registrant" or "the Registrant" include Sunkiss Thermoreactors, Inc. as well as affiliated corporations or entities, including subsidiary or parent corporations, their predecessors, officers, directors, employees, agents, and representatives thereof.
- 2. The terms "Petitioner," "the Petitioner," "you," or "your" include FINAM as well as affiliated corporations or entities including subsidiary or parent corporations, its predecessors, officers, directors, employees, agents, and representatives thereof.

- The terms "document" or "documents" include, without limitation, originals, 3. master, and every copy of a writing that is not an identical duplicate of the original, including handwritings, and printed, typed, or other graphic or photographic matter including film or microfilm of any kind or nature, video tape, recordings (tape, disk, CD-ROM, or other) of oral communications and other data, compilations from which information can be obtained, including computer files and electronic mail messages, in the possession, custody, or control of the Petitioner or any present or former officers, employees or agents thereof, or known by the Petitioner to exist. The terms "document" or "documents" include, without limiting the generality of the foregoing, all letters, teletypes, correspondence, contracts, agreements, notes to files, shop notebooks, reports, memoranda, flow sheets, formal or informal drawings, or diagrams, calendar or diary entries, memoranda of telephone or personal conversations or of meetings or conferences, studies, reports, interoffice communications, price lists, bulletins, circulars, statements, manuals, summaries or compilations, minutes of meetings, maps, charts, graphs, order papers, articles, announcements, books, catalogs, records, tables, books of accounts, ledgers, vouchers, analyses, or statistical data, ALFD or BATF filings, labels, or containers.
- 4. The terms "person" or "persons" include your company and, without limitation, individuals, associations, companies, divisions, corporations, partnerships, trusts, joint venture and any business entity associated with your company.
- 5. The term "plan" includes proposals, recommendations, analyses, outlines, or studies, whether or not finalized or authorized, in addition to those already implemented.
 - 6. The terms "and" and "or" shall have both conjunctive and disjunctive meanings.

- 7. The term "oral communications" shall mean any utterance heard by any other person, whether in person, by telephone, or otherwise.
- 8. The term "control" shall mean the authority of the individual to direct the management or policies of any person, entity, association, firm, or corporation.
- 9. The terms "related to" or "relating to" shall mean directly or indirectly mentioning or describing, pertaining to, being connected with, or reflecting upon a stated subject matter.
- 10. "Trademark," "service mark," "mark," or "name" shall mean any words and/or designs used by any persons or entities to identify their products, their services, or their business identity.
- 11. For purposes of these interrogatories, "Registrant's Mark" shall mean the mark SUNKISS identified in Registration Number 1,200,333.
- 12. For purposes of these interrogatories, "Registrant's Goods" shall mean the goods identified in Registration Number 1,200,333.
- 13. The term "in commerce" shall have the same meaning as that defined in15 U.S.C. § 1127.
- 14. The term "identify" as used herein in connection with a "document" or "documents" means:
- (a) Furnish the name and date of the document (and if not dated, the approximate date), the date the document was prepared, the date the document was sent, the number of pages comprising the document, the subject matter of the document, the name, address, and title (if any) of the author of the document, the name, address, and title (if any) of the person to whom the document was addressed, the names and addresses of all persons to

whom copies of the document were or have been sent, and the entity or entities with which all such persons were connected on the date of the document;

- (b) State whether the Petitioner is in the possession of the original, master, or a copy of the document and, if not in possession of the original, master, or copy, furnish the name and last known address of the custodian of the original, master, or copy;
- (c) Provide a general description of the document (i.e., letter, drawing, etc.); and
- (d) Provide a general description of the subject matter to which the document pertains.
- 15. The singular form of a term shall include the plural form of that term, and the plural form of a term shall include the singular form of that term.
 - 16. A masculine, feminine, or neuter pronoun shall not exclude the other genders.

INSTRUCTIONS

- 1. Each of the documents and things requested herein is to be produced for inspection and copying and sent to Registrant's counsel. Photocopies may be submitted in lieu of the original documents as long as they are accompanied by a verification to the effect that the photocopies are true and correct copies of what they purport to represent and are produced in response to these Requests of the Registrant.
- 2. If the Petitioner refuses to produce any document on grounds of privilege or based on the "work product" rule, the Petitioner is requested to identify each such document by title, subject matter, date, author, and (if applicable) the individual to whom the document was addressed, along with a brief statement setting forth the Petitioner's reason for withholding the document. All non-privileged portions of any responsive document for which a claim of privilege is asserted shall be submitted with notations where redactions have been made.
- 3. Computer files shall be produced in hard copy and in machine-readable form with any instructions required to use the data. Electronic mail messages shall be provided even if only available on "backup" or archive tapes or disks. Any policy for deletion or destruction of electronic mail messages, if implemented, shall be described, and the date of inception of the policy is to be identified.
- 4. This request shall be deemed continuing in nature so as to require production of any and all documents and things responsive to any requests that are created or obtained by the Petitioner after the date of the Petitioner's compliance with this request. A complete response to this request implies a continuing obligation to provide the Registrant with current, updated

documents relevant to each request. This obligation continues throughout all subsequent proceedings of this opposition.

- 5. If a document identified to be responsive no longer exists, has been destroyed, or is alleged to have been destroyed, state the date of and reason for its destruction; identify each person having any knowledge of its destruction and each person responsible for its destruction; and describe the document to the extent possible. If a document retention program has been implemented, describe the program and identify the date when the program was initiated.
- 6. Where a request is considered vague, confusing, and/or unclear, the Petitioner is requested to produce the documents most reasonably believed to be responsive to the request with an explanation as to the reason the request is believed to be vague, confusing, and/or unclear. Alternatively, the Petitioner's attorney is requested to contact the Registrant's attorney by telephone for clarification of the request.
- 7. Where production to a request is considered burdensome, the Petitioner is requested to provide a reasonable production of the most relevant documents and things with an explanation as to the reason the production will be burdensome. Alternatively, the Petitioner's attorney is requested to contact the Registrant's attorney by telephone and/or letter for clarification of the request.

REQUESTS TO PRODUCE

REQUEST NO. 1

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 6 that "Registrant has abandoned its rights in some or all of the goods identified in Registrations No. 1,200,333."

RESPONSE TO REQUEST NO. 1

REQUEST NO. 2

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 7 that "Registrant does not currently use the SUNKISS mark on all goods identified in Registration No. 1,200,333."

RESPONSE TO REQUEST NO. 2

REQUEST NO. 3

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 8 that "Registrant has not used its SUNKISS mark in commerce or on connection with some or all of the goods identified in Registration No. 1,200,333 for a period of three years."

RESPONSE TO REQUEST NO. 3

REQUEST NO. 4

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 9 that "Registrant has intended to abandon use of the SUNKISS mark on some or all of the goods identified in Registration No. 1,200,333."

RESPONSE TO REQUEST NO. 4

REQUEST NO. 5

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 10 that "Registrant has no intention to use the SUNKISS mark on or in connection with its goods."

RESPONSE TO REQUEST NO. 5

REQUEST NO. 6

All documents and things referenced in Petitioner's Initial Disclosures.

RESPONSE TO REQUEST NO. 6

REQUEST NO. 7

All documents and things that the Petitioner intends to use or will use in this proceeding.

RESPONSE TO REQUEST NO. 7

REQUEST NO. 8

All documents and things that refer to or relate to any one or more of the answers provided to Registrant's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 8

REQUEST NO. 9

All documents and things regarding, referring to or mentioning the Registrant.

RESPONSE TO REQUEST NO. 9

Respectfully submitted,

15 June 15

Date

Rebecca J. Stempien Coyle

Paul Grandinetti

LEVY & GRANDINETTI

P.O. Box 18385

Washington, D.C. 20036-8385

Telephone (202) 429-4560

Facsimile (202) 429-4564

Attorneys for Registrant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S FIRST SET OF REQUESTS FOR DOCUMENTS was served this date by first class mail, postage prepaid, and e-mail on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero
Ms. Jess M. Collen
COLLEN IP INTELLECTUAL PROPERTY LAW PC
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
kmogavero@collenip.com

June 15, 2015
Date

Paul Grandinetti

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EXHIBIT 5

Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc. Registrant's Opposition to Petitioner's Motion to Amend



Telephone (914) 941-5668 Facsimile (914) 941-6091 www.collen*IP*.com

E-mail: kmogavero@collen/P.com

August 10, 2015

BY FIRST CLASS MAIL

COPY BY E-MAIL: mail@levygrandinetti.com

Levy & Grandinetti PO Box 18385 Washington, DC 20036-8385

Attention: Ms. Rebecca J. Stempien Coyle

Re: Cancellation Proceeding No. 92060849

FINAM v Sunkiss Themoreactors, Inc.

Mark : SUNKISS Our Ref. : R224

Dear Ms. Coyle:

Enclosed please find Petitioner's Responses and Objections to Registrant's First Set of Interrogatories and First Requests for the Production of Documents and Things, and Document Production Bates Nos.FINAM000001 to FINAM000082. Please note that there are documents that are labeled "Confidential" pursuant to the Protective Order.

Very truly yours,

Collen IP

Kristen A. Mogavero

Kristen Mr

KAM:mcm

Enclosures:

Petitioner's Objections and Responses to Registrant's First Set of Interrogatories

Petitioner's Objections and Responses to Registrant's First Requests for the

Production of Documents and Things

Document Production Bates Stamped FINAM000001 - FINAM000082

p:\R\R2\R224_Letter to opp counsel encl document prod FINAM000001 - FINAM000082 150810.docx



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849 Reg. No.: 1,200,333

PETITIONER'S RESPONSES AND OBJECTIONS TO REGISTRANT'S FIRST SET OF INTERROGATORIES

Petitioner FINAM (hereafter, "Petitioner"), hereby serves its responses and objections to Sunkiss Thermoreactor, Inc.'s (hereafter, "Registrant") First Set of Interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

- 1. Petitioner objects to each and every Interrogatory in their entirety on the ground that Petitioner is responding on the basis of its current knowledge and information. Petitioner reserves the right to supplement each response to these interrogatories.
- 2. Petitioner objects to each and every Interrogatory insofar as and to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

- 3. Petitioner objects to each and every Interrogatory insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Petitioner, such information will be disclosed subject to an appropriate protective order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.
- 4. Petitioner objects to each and every Interrogatory to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Petitioner were it to be disclosed or available to competitors of Petitioner. Petitioner will not provide such information.
- 5. Petitioner objects to each and every Interrogatory to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.
- 6. Petitioner objects to Registrant's definitions in their entirety to the extent same seeks to impose obligations on Petitioner beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.
- 7. Petitioner objects to each and every Interrogatory to the extent it calls for information that exceeds a reasonable durational scope.
- 8. Petitioner objects to each and every Interrogatory to the extent it calls for information not yet available as these responses are made during the discovery process. Petitioner reserves the right to supplement responses when the information becomes available.

- 9. Petitioner objects to each and every Interrogatory to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.
- 10. Petitioner objects to each and every Interrogatory to the extent it is duplicative.
- 11. Petitioner objects to each and every Interrogatory to the extent that it is not limited in geographic scope to the United States.
- 12. Petitioner objects to the extent it is not required to respond to these interrogatories to the extent that Registrant has exceeded the permitted number of interrogatories, including subparts, as set forth in 37 C.F.R. § 2.120(d)(1), and TBMP §§ 405.03(a) and 405.03(e).

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 6 that "Registrant has abandoned its rights in some or all of the goods identified in Registrations No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 1

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Interrogatory to the extent that it is overly broad and unduly burdensome. Petitioner further objects to this Interrogatory to the extent that it calls for legal opinion and/or legal argument. Petitioner further objects to this Interrogatory to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, in lieu of futher response, as provided by the Rules, Petitioner has produced a representative sampling of documents that are responsive to this Interrogatory. Petitioner reserves its right to supplement its response to this Interrogatory.

INTERROGATORY NO. 2

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 7 that "Registrant does not currently use the SUNKISS mark on all goods identified in Registration No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 2

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Interrogatory to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Interrogatory to the extent it is duplicative of Interrogatory 1. Petitioner further objects to this Interrogatory to the extent that it calls for legal opinion and/or legal argument. Petitioner further objects to this Interrogatory to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, in lieu of futher response, as provided by the Rules, Petitioner has produced a representative sampling of documents that are responsive to this Interrogatory. Petitioner reserves its right to supplement its response to this Interrogatory.

INTERROGATORY NO. 3

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 8 that "Registrant has not used its SUNKISS mark in commerce or on connection with some or all of the goods identified in Registration No. 1,200,333 for a period of three years."

RESPONSE TO INTERROGATORY NO. 3

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Interrogatory to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Interrogatory to the extent it is duplicative of Interrogatories 1 and 2. Petitioner further objects to this Interrogatory to the extent that it calls for legal opinion and/or legal argument. Petitioner further objects to this Interrogatory to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, in lieu of futher response, as provided by the Rules, Petitioner has produced a representative sampling of documents that are responsive to this Interrogatory. Petitioner reserves its right to supplement its response to this Interrogatory.

INTERROGATORY NO. 4

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 9 that "Registrant has intended to abandon use of the SUNKISS mark on some or all of the goods identified in Registration No. 1,200,333."

RESPONSE TO INTERROGATORY NO. 4

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Interrogatory to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Interrogatory to the extent it is duplicative of Interrogatories 1, 2 and 3. Petitioner further objects to this Interrogatory to the extent that it calls for legal opinion and/or legal argument. Petitioner further objects to this Interrogatory to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, in lieu of futher response, as provided by the Rules, Petitioner has produced a representative sampling of documents that are responsive to this Interrogatory. Petitioner reserves its right to supplement its response to this Interrogatory.

INTERROGATORY NO. 5

State in detail the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 10 that "Registrant has no intention to use the SUNKISS mark on or in connection with its goods."

RESPONSE TO INTERROGATORY NO. 5

Petitioner hereby incorporates by reference all of its General Objections. Specifically,

Petitioner objects to this Interrogatory to the extent that it is overly broad and unduly

burdensome. Petitioner objects to this Interrogatory to the extent it is duplicative of

Interrogatories 1, 2, 3, and 4. Petitioner further objects to this Interrogatory to the extent that it

calls for legal opinion and/or legal argument. Petitioner further objects to this Interrogatory to

the extent it seeks disclosure of information protected by the attorney-client privilege, the work

product doctrine, or any other applicable privilege or immunity, and will not produce such

information.

Notwithstanding and without waiving any of the foregoing objections, in lieu of futher

response, as provided by the Rules, Petitioner has produced a representative sampling of

documents that are responsive to this Interrogatory. Petitioner reserves its right to supplement its

response to this Interrogatory.

Respectfully Submitted

As to Objections,

Jess M. Collen

Kristen A. Mogavero

COLLEN IP

THE HOLYOKE-MANHATTAN BUILDING

80 South Highland Avenue

Ossining, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Counsel for Petitioner FINAM

Date: August 10, 2015

JMC/KAM:mcm

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CERTIFICATE OF SERVICE

I, <u>Meaghan Machcinski</u>, hereby certify that I caused a true and correct copy of Petitioner's Objections and Responses To Registrant's First Set Of Interrogatories to be served upon the following, via first class mail, postage prepaid this 10th Day of August, 2015.

Levy & Grandinetti
PO Box 18385
Washington, DC 20036-8385
Attention: Ms. Rebecca J. Stempien Coyle

luft fentation

ATTORNEY DOCKET NO. R224

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849 Reg. No.: 1,200,333

<u>PETITIONER'S RESPONSES AND OBJECTIONS TO REGISTRANT'S</u> <u>FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS</u>

Petitioner FINAM (hereafter, "Petitioner"), hereby serves its responses and objections to Sunkiss Thermoreactor, Inc.'s (hereafter, "Registrant") Request for Production of Documents and Things pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

- 1. Petitioner objects to each and every Document Request in their entirety on the ground that Petitioner is responding on the basis of its current knowledge and information. Petitioner reserves the right to supplement each response to these Document Requests.
- 2. Petitioner objects to each and every Document Request insofar as and to the extent it seeks production of documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent disclosure of such information shall not be a waiver of the

attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

- 3. Petitioner objects to each and every Document Request insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Petitioner, such information will be disclosed subject to an appropriate protective order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.
- 4. Petitioner objects to each and every Document Request to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Petitioner were it to be disclosed or available to competitors of Petitioner. Petitioner will not provide such information.
- 5. Petitioner objects to each and every Document Request to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.
- 6. Petitioner objects to Registrant's definitions in their entirety to the extent same seeks to impose obligations on Petitioner beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.
- 7. Petitioner objects to each and every Document Request to the extent it calls for information that exceeds a reasonable durational scope.

- 8. Petitioner objects to each and every Document Request to the extent it calls for information not yet available as these responses are made during the discovery process. Petitioner reserves the right to supplement responses when the information becomes available.
- 9. Petitioner objects to each and every Document Request to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.
- 10. Petitioner objects to each and every Document Request to the extent it is duplicative.
- 11. Petitioner objects to each and every Document Request to the extent that it is not limited in geographic scope to the United States.

PETITIONER'S RESPONSE TO REGISTRANT'S REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 6 that "Registrant has abandoned its rights in some or all of the goods identified in Registrations No. 1,200,333."

RESPONSE TO REQUEST NO. 1

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 2

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 7 that "Registrant does not currently use the SUNKISS mark on all goods identified in Registration No. 1,200,333."

RESPONSE TO REQUEST NO. 2

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Request to the extent it is duplicative of Request No. 1. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 3

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 8 that "Registrant"

has not used its SUNKISS mark in commerce or on connection with some or all of the goods identified in Registration No. 1,200,333 for a period of three years."

RESPONSE TO REQUEST NO. 3

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Request to the extent it is duplicative of Request Nos. 1 and 2. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 4

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation \P 9 that "Registrant has intended to abandon use of the SUNKISS mark on some or all of the goods identified in Registration No. 1,200,333."

RESPONSE TO REQUEST NO. 4

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Request to the extent it is duplicative of Request Nos. 1, 2 and 3.

Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 5

All documents and things relating or referring to or evidencing, reflecting, or constituting the factual basis for Petitioner's allegation in the Petition for Cancellation ¶ 10 that "Registrant has no intention to use the SUNKISS mark on or in connection with its goods."

RESPONSE TO REQUEST NO. 5

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Request to the extent it is duplicative of Request Nos. 1, 2, 3 and 4. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 6

All documents and things referenced in Petitioner's Initial Disclosures.

RESPONSE TO REQUEST NO. 6

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner further objects to this Request to the extent it is duplicative of Request Nos. 1, 2, 3, 4 and 5.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced a representative sampling of documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 7

All documents and things that the Petitioner intends to use or will use in this proceeding.

RESPONSE TO REQUEST NO. 7

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner further objects on the grounds that this request is duplicative and redundant.

REQUEST NO. 8

All documents and things that refer to or relate to any one or more of the answers provided to Registrant's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 8

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner objects to this Request to the extent it is duplicative of Request Nos. 1, 2, 3, 4 and 5. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information.

Notwithstanding and without waiving any of the foregoing objections, Petitioner has produced documents that are responsive to this Request. Petitioner reserves its right to supplement its response to this Request.

REQUEST NO. 9

All documents and things regarding, referring to or mentioning the Registrant.

RESPONSE TO REQUEST NO. 9

Petitioner hereby incorporates by reference all of its General Objections. Specifically, Petitioner objects to this Request to the extent that it is overly broad and unduly burdensome. Petitioner further objects to this Request to the extent it seeks disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Petitioner further objects to this request in that is not limited in duration, nor is it limited in geographic scope to the United States. Petitioner further objects to this request on the basis that it calls for information neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully Submitted,

By:

Jess M. Collen

Kristen A. Mogavero

COLLEN IP

THE HOLYOKE-MANHATTAN BUILDING

80 South Highland Avenue

Ossining, NY 10562

(914) 941-5668 Tel.

(914) 941-6091 Fax

Counsel for Petitioner FINAM

Date: August 10, 2015

JMC/KAM:mcm

CERTIFICATE OF SERVICE

I, <u>Meaghan Machcinski</u>, hereby certify that I caused a true and correct copy of Petitioner's Objections and Responses To Registrant's First Set Of Requests for the Production of Documents and Things to be served upon the following, via first class mail, postage prepaid this 10th Day of August, 2015.

Levy & Grandinetti PO Box 18385 Washington, DC 20036-8385

Attention: Ms. Rebecca J. Stempien Coyle

EXHIBIT 6

REDACTED VERSION

Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc.

Registrant's Opposition to Petitioner's Motion to Amend

WWW.SUNSPOTPRODUCT.COM

AMERICAN INDUSTRIAL OVENS

WE PRODUCE AND DISTRIBUTE INDUSTRIAL PROCESSES AND EQUIPMENTS FOR INDUSTRIAL DRYING FOR METAL, WOOD AND PLASTIC AND MORE.

AYOTTE TECHNO-GAZ

SUNKISS

sun-Spot

+

WE ARE YOUR EXCLUSIVE DEALER AND MANUFACTURER OF SUNKISS THERMOREACTORS

CONVECTION OR INFRARED INDUSTRIAL OVEN

FLEXIBLE AND SMALL DRYING SYSTEM HT-100 & HT-200

13

SUNKISS000001

http://www.americanovens.com/en

INDUSTRIAL WASHER

ULTRA-PORTABLE DRYING SYSTEM SUN-SPOT

TRY OUR TECHNOLOGY ON YOUR OWN PRODUCT AT OUR TEST FACILITY



WHO WE WORK FOR









USA • CANADA • MEXICO • AFRICA

FINAM000002

American Industrial Ovens - Ayotte Techno-Gaz

2223 ROUTE 131 NORD, NOTRE-DAME-DE-LOURDES (QUEBEC), CANADA JOK 1KO

1877-499-9950

450-756-0219





HT100 - HT200



EFFICIENCY

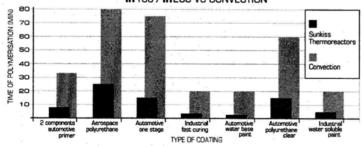
SUNIGES-THEORY

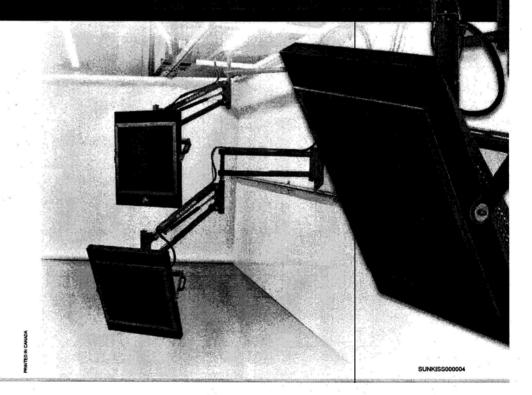
Sunidiss-Theorem reactors are flameless catalytic infrared heaters. This unit is simple to use, cost affective and offers the option to force the drying or curing of any type of organic coatings. Its particularly efficient over-water base type of coating, since it force the moisture out of the film within 2 to 3 minutes.

NO BUFFING REQUIRED

With such a quick curing process, there's no need to use fans or any air movement to make the paint dry faster. No dust or dirt is blown onto the paint, so no buffing is required.

SUNKISS THERMOREACTORS CURING TIME HT100 / HT200 VS CONVECTION





HT100 - HT200

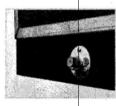




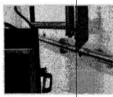








PYROMETER Read and control the surface temperature to avoid overheat with an accuracy of ± 3 F



RAIL SYSTEM Allow to move the HT-100 or HT-200 sideways

TECHNOLOGY OF CATALYTIC COMBUSTION

The flameless combustion produced by the Sunkise-Thermoneactors emits medium waves infrared which will generate tremendous heat within the film through molecular excitation. This action drives the solvent and the water outward.

FEATURES

- Rameless, catalytic combustion, 100 % safe to use
- · Infrared medium waves
- CSA approved
- Curing foot print 4 X 4 feet by Thermoreactors: HT-200 have a 4 X 8 feet foot print
- 6 to 8 times faster than convection
- Very fast curing, low fuel consumption
- Energy saving: 50-60 % compare to convection
- Shorter drying time: Increase production capacity
- Maintenance free, solid and robust construction, life span up to 20 years
- WILL WORK OF ALL TYPES OF ORGANICS COATINGS
- Urethane • Latex
- Epoxy's • Lacquer
- Water base · Acrylic's Polyester • Glue
- Alkyd Sealant Melamine · Etc.











APPLICATIONS

Four industriel
Ligne à peinture
Laveuse industrielle
Brûleur, séchoir industriel
Drying System
Industrial Oven
Infrared System

Burner Paint Line-Washer

Ayotte

TECHNO-GAZ Inc. PROCÉDÉ INDUSTRIEL

Industrial Process

americanovens.com

Montréal : (450) 756-0219 - U.S.A. : 1-877-499-9950

Fax: (450) 756-2264

2223 Rte 131 N. Notre-Dame De Lourdes Quebec J0K 1K0 Can.



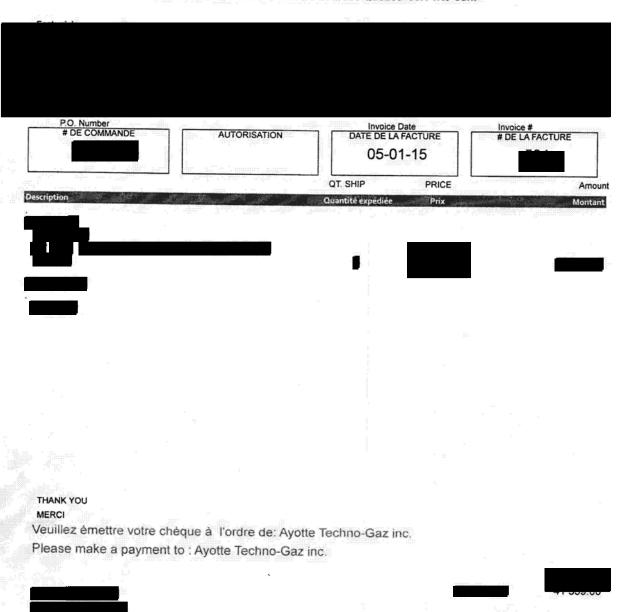








EXHIBIT 7

Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc. Registrant's Opposition to Petitioner's Motion to Amend

Paul Grandinetti

From: Paul Grandinetti

Sent: Friday, August 28, 2015 8:15 PM

To: 'Kristen Mogavero'

Subject: Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc.

Dear Kristen:

It was a pleasure speaking earlier today. Pursuant to our call today I am confirming that FINAM will:

- (1) Provide Sunkiss Thermoreactors Inc. ("TSI") a list of the bates/production numbers it would like TSI to consider redesignating or un-designating;
- (2) Provide TSI with some sort of proof that Sunkiss SAS and FINAM are related and that Sunkiss SAS approves designating the agreements to which Sunkiss SAS is a party as Confidential, and therefore able to be viewed by FINAM;
- (3) Confirm and provide TSI with the bates/production numbers of the documents that FINAM contends are illegible, or difficult to read;
- (4) Update TSI on whether FINAM will be providing certified English translations of any of FINAM's documents produced in French; and
- (5) Confirm whether FINAM will be supplementing any of its discovery responses or production.

TSI now understands that FINAM's abandonment allegation is based on two different theories: (1) there was a question whether the use of the mark by Ayotte Techno-Gaz and American Ovens inured to the benefit of TSI and/or (2) there is a question as to the correct ownership of the mark at issue in relation to TSI and Sunkiss SAS. As stated during our call today, it is TSI's position that the documents and answers provided in response to FINAM's discovery requests clearly establish that the use of the mark by Ayotte Techno-Gaz and American Ovens did indeed inure to the benefit of TSI. Additionally, any questions of "correct ownership" is not encompassed by abandonment and has not been plead by FINAM. Therefore, it appears that FINAM no longer has any legally cognizable theory, or facts to support any theory, for pursuing its petition to cancel and the petition should be dismissed. The continuance of the proceeding would be, at the least, frivolous and in violation of Rule 11 and the TTAB's similar rules. Of course, we will consider any explanation from FINAM as to why there remains a non-frivolous theory for this proceeding.

Regards, Rebecca Stempien Coyle

Levy & Grandinetti 1120 Connecticut Ave NW Suite 304 Washington DC 20036

Tel. (202) 429-4560 Fac. (202) 429-4564 mail@levygrandinetti.com

EXHIBIT 8

Cancellation No. 92/060,849 FINAM v. Sunkiss Thermoreactors, Inc. Registrant's Opposition to Petitioner's Motion to Amend

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849 Reg. No.: 1,200,333

PETITIONER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM ("Petitioner") submits herewith for production by Sunkiss Thermoreactors, Inc. ("Registrant") these Requests for the Production of Documents and Things.

Petitioner hereby requests that Registrant produce the following documents and tangible things to the attention and at the address of the Petitioner's undersigned counsel's offices at Collen *IP*, THE HOLYOKE-MANHATTAN BUILDING, 80 South Highland Avenue, Ossining, New York, 10562 within thirty (30) days after service of these requests. These requests shall be deemed continuing, and require production of any documents called for herein or any such documents which shall come within the custody or control of Registrant, or its agents or representatives at any time between Registrant's initial production and the further prosecution of this action.

Please note the instructions and definitions included in the Petitioner's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

DOCUMENTS TO BE PRODUCED

- 1. All documents which refer to, relate to, or evidence the first use in interstate commerce of the SUNKISS mark by Registrant.
- 2. Documents evidencing any corporations, companies, partnerships, joint ventures or like organizations, registered or unregistered, through which Registrant sells, advertises and/or markets Products bearing the SUNKISS mark.
- 3. All documents relating to any application ever filed in the United States for federal or state registration of the SUNKISS mark.
- 4. All documents and other evidence which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on the goods and services listed in the Registration since 1983.
- 5. Documents relating to the manufacturing or developing of Products to be used with the SUNKISS mark in the United States.
- 6. All licenses, agreements, consents or other documents concerning use of the SUNKISS mark in the United States.
- 7. All documents concerning third-party use of the SUNKISS mark, whether authorized or unauthorized, in the United States.
- 8. All licenses, assignments, consents or other agreements which reference the SUNKISS mark, whether or not Registrant is a party.
 - 9. All documents pertaining to, evidencing, or referencing the ownership of the

SUNKISS mark in the United States.

- 10. All licenses, agreements, consents or other documents concerning, referencing, or evidencing Ayotte Techno-Gaz's use of the SUNKISS mark in the United States.
- 11. All licenses, agreements, consents, or other documents concerning Ayotte Techno-Gaz's manufacturing of goods to be sold under the SUNKISS mark in the United States.
- 12. All licenses, agreements, consents, or other documents concerning Ayotte Techno-Gaz's procurement of goods to be sold under the SUNKISS mark in the United States.
- 13. All licenses, agreements, consents or other documents concerning American Industrial Oven's use of the SUNKISS mark in the United States.
- 14. All licenses, agreements, consents, or other documents concerning American Industrial Oven's manufacturing of goods to be sold under the SUNKISS mark in the United States.
- 15. All licenses, agreements, consents, or other documents concerning American Industrial Oven's procurement of goods to be sold under the SUNKISS mark in the United States.
- 16. All documents pertaining to, evidencing, or referencing the trademark rights of Sunkiss Societe Par Actions Simplifiee ("Sunkiss SAS") in the SUNKISS mark.
- 17. All assignments, licenses, consents or other agreements to which Sunkiss SAS and Registrant are parties.
- 18. All assignments, licenses, consents or other agreements to which Sunkiss SAS and Registrant are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.
 - 19. All documents pertaining to, evidencing, or referencing the trademark rights of

Ayotte Techno-Gaz Inc. in the SUNKISS mark.

- 20. All assignments, licenses, consents or other agreements to which Ayotte Techno-Gaz Inc. and Registrant are parties.
- 21. All assignments, licenses, consents or other agreements to which Registrant and Ayotte Techno-Gaz Inc. are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.
- 22. All documents pertaining to, evidencing, or referencing the trademark rights of American Industrial Ovens. in the SUNKISS mark.
- 23. All assignments, licenses, consents or other agreements to which American Industrial Ovens. and Registrant are parties.
- 24. All assignments, licenses, consents or other agreements to which Registrant and American Industrial Ovens are parties and which reference the intellectual property rights (including but not limited to trademark rights) of one or both parties.
- 25. All documents evidencing each Product with which the SUNKISS mark is used in the United States by Registrant.
- 26. All documents evidencing each Product with which the SUNKISS mark is used in the United States by Ayotte Techno-Gax.
- 27. All documents evidencing each Product with which the SUNKISS mark is used in the United States by American Industrial Ovens.
- 28. Samples of actual Products sold in the United States under the SUNKISS mark, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by Registrant, in the ordinary course of business.
 - 29. Samples of actual Products sold in the United States under the SUNKISS mark,

with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by Ayotte Techno-Gaz, in the ordinary course of business.

- 30. Samples of actual Products sold in the United States under the SUNKISS mark, with the mark clearly affixed in the ordinary manner in which the mark is affixed to goods for sale by American Industrial Ovens, in the ordinary course of business.
- 31. Any tags or labels used by Registrant in connection with the sale of Products under the SUNKISS mark in the United States.
- 32. A sample of the complete packaging in which each and every Product sold or distributed by Registrant in the United States under the SUNKISS mark is:
 - a. shipped from Registrant, or others authorized by Registrant, to customers;
 - b. displayed at the point of sale to the ultimate users; and/or
 - c. contained when sold or distributed to the ultimate users.
- 33. Representative invoices evidencing Registrant's yearly sales (in dollars) in the United States, of Products bearing the SUNKISS mark.
- 34. Representative documents identifying the number of Products bearing the SUNKISS mark sold by Registrant in the United States.
- 35. Representative documents identifying the number of Products bearing the SUNKISS mark sold by Ayotte Techno-Gaz in the United States.
- 36. Representative documents identifying the number of Products bearing the SUNKISS mark sold by American Industrial Ovens in the United States.
- 37. Representative documents identifying the number of Products bearing the SUNKISS mark sold by other third-parties authorized by Registrant in the United States.
 - 38. Representative documents identifying Products bearing the SUNKISS mark that

are, or were, sold or advertised by Registrant in the United States.

- 39. Representative documents identifying Products bearing the SUNKISS mark that are, or were, sold or advertised by others authorized by or acting in conjunction with Registrant in the United States.
- 40. All documents identifying Products Registrant, or others authorized by or acting in conjunction with Registrant, plans to sell, market or develop in the United States under the SUNKISS mark in the future.
- 41. Samples of promotional and advertising materials, created by or on behalf of Registrant, on which the term "Sunkiss" (alone or in connection with other elements) is printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.
- 42. A representative sample of documents relating to the advertising in the United States of any Products sold by Registrant under the SUNKISS mark, including invoices for advertising services, for each year the mark has been used.
- 43. A representative sample of documents relating to the promotion and marketing, including, but not limited to, point of sale and point of purchase materials, of any Products sold by Registrant, in the United States under the SUNKISS mark, for each year the mark has been used.
- 44. A listing of the Registrant's customers in the United States for Products sold under the the SUNKISS mark.
- 45. Samples of all marketing and promotional materials, including, without limitation, labels, tags, packaging, brochures, advertisements, pamphlets, manuals, product information sheets, and any other promotional merchandise or literature, on which the SUNKISS mark has

been printed, embossed, stamped, or otherwise affixed, whether or not such materials have been published or used in commerce.

- 46. All documents that refer or relate to Petitioner.
- 47. All communications with any person other than Petitioner concerning a dispute or potential dispute regarding trademark ownership rights of the SUNKISS mark in the United States.
- 48. All documents which refer to, relate to, or concern a dispute or potential dispute regarding trademark ownership rights of the SUNKISS mark in the United States.
- 49. All documents identifying any domain names or websites owned or operated by Registrant that include the Sunkiss Mark, or the term Sunkiss, alone or in combination with other words or elements.
- 50. All documents identifying any domain names or websites owned or operated by a third-party that include the Sunkiss Mark, or the term Sunkiss, alone or in combination with other words or elements.
- 51. Documents evidencing all other uses by Registrant of the term "Sunkiss," alone or in combination with other elements.
- 52. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on space heaters.
- 53. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on air conditioners.
- 54. All documents that constitute, evidence, reflect, describe, refer to, or relate to the first time Registrant used the SUNKISS mark on refrigerators.
 - 55. All documents that constitute, evidence, reflect, describe, refer to, or relate to the

first time Registrant used the SUNKISS mark on goods in Class 011.

- 56. All documents that constitute, evidence, reflect, describe, refer to, or relate to the licensees that are allowed to sell goods bearing the SUNKISS mark.
- 57. All documents that constitute, evidence, reflect, describe, refer to or relate to yearly revenues that Registrant receives from licensees or other third-parties who sell Products bearing the SUNKISS mark.
- 58. All documents that constitute, evidence, reflect, describe, refer to or relate to yearly revenues that Registrant receives from Ayotte Techno-Gaz's sale of Products bearing the SUNKISS mark.
- 59. All documents that constitute, evidence, reflect, describe, refer to or relate to the yearly revenue generated from Registrant's direct sales of Products bearing the SUNKISS mark.
- 60. All licenses, agreements, consents or other documents granting third-parties the right to use the SUNKISS mark.
- 61. All documents which refer to, relate to, or evidence Registrant's right to inspect its licensee's use of the SUNKISS mark.
- 62. All documents which refer to, relate to, or evidence the procedure by which Registrant monitors licensees' use(s) of the SUNKISS mark.
- 63. All documents which refer to, relate to, or evidence the frequency with which Registrant monitors licensees' use(s) of the SUNKISS mark.
- 64. All communications concerning the licensees' use(s) of the SUNKISS mark as it relates to Registrant's quality control standards.
- 65. All documents that evidence, reflect, describe, refer to or relate to any contracts or agreements made on behalf of Registrant with any third party regarding use of the SUNKISS

mark.

- 66. All documents that evidence, reflect, describe, refer to or relate to the termination of any licensee or agreement regarding use of the SUNKISS mark.
- 67. All documents that evidence, reflect, describe, refer to or relate to any audit reports of Registrant's licensees' use of the SUNKISS mark.
- 68. A representative sampling of documents that evidence, reflect, describe, refer to or relate to Registrant's efforts to monitor its licenses' use of the SUNKISS mark.
- 69. A representative sampling of documents that evidence, reflect, describe, refer to or relate to Registrant's policing of the SUNKISS mark.
- 70. All documents on which Registrant intends to rely in this proceeding, including all documents that Registrant intends to offer into evidence in this proceeding.
- 71. All documents identifying, referring to or relating to any person whom Registrant intends to call as a fact or expert witness in this proceeding.
- 72. All documents Registrant has provided or shown to any person whom Registrant intends to call as a fact or expert witness in this proceeding.
- 73. All documents relied upon, either in whole or in part, as a basis for any opinion rendered or to be rendered by an expert witness whom Registrant may call to testify in this proceeding.
- 74. All statements, affidavits, declarations, reports and communications you have received from any person who is expected to give expert testimony as an expert witness on behalf of Registrant in this proceeding.
- 75. All documents identified by Registrant in response to Petitioner's First Set of Interrogatories served contemporaneously herewith.

76. All documents that Registrant was required to identify, or from which Registrant obtained information, in responding to Petitioner's First Set of Interrogatories, served contemporaneously with these Requests, and which documents have not been otherwise produced in response to these Requests.

77. All documents that Registrant contends are relevant to this proceeding.

Respectfully Submitted,

By: ____

Jess M. Collen Kristen A. Mogavero COLLEN *IP* THE HOLYOKE-MANHATTAN BUILDING 80 South Highland Avenue Ossining, NY 10562 (914) 941-5668 Tel. (914) 941-6091 Fax Counsel for Petitioner FINAM

Date: June 16, 2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849 Reg. No.: 1,200,333

PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM (hereafter, "Petitioner") hereby requests that Registrant Sunkiss Thermoreactors, Inc. ("Registrant") respond under oath or by affirmation to the following Interrogatories within thirty (30) days after service of these requests. These Interrogatories shall be deemed continuing and Registrant is requested to serve upon Petitioner, in the form of supplementary Answers, any additional information requested herein that may be known to Registrant after the date of its Answers to these Interrogatories.

INSTRUCTIONS AND DEFINITIONS

The following definitions and instructions are applicable to Petitioner's First Set of Interrogatories, Petitioner's First Request for Production of Documents and Petitioner's First Request for Admissions:

A. "Petitioner" means the named Petitioner in this action, FINAM, including its divisions, departments, subsidiaries, parents, partners, joint venture partners, officers, directors, owners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of FINAM.

- B. "Registrant" or "you" shall mean the named Registrant, Sunkiss Thermoreactors, Inc., including all partners, joint venture partners, agents, employees, accountants, attorneys, any predecessor or successor in interest thereof, and all other persons acting on behalf of or for the benefit of Sunkiss Thermoreactors, Inc.
- C. The term "Registration" means United States Trademark Registration No. 1,200,333.
- D. The term "Registrant's Mark" means the trademark identified in United States Trademark Registration No. 1,200,333.
- E. The terms "Goods" and "Products" means the items marketed and distributed or intended to be marketed and distributed by Registrant and/or the services provided.
- F. The terms "data," "document" and "documents" means any writing of any kind, in any form or format, including all originals, copies, non-identical copies of all correspondence, papers, books, messages, publications, recordings, literature, letters, email communications, photographs, price lists, brochures, memoranda, notes, reports, drawings, diaries, graphic, aural, mechanical or electronic records, or any information that is stored electronically or otherwise and is capable of being retrieved, and any other writings whether in final or draft form and whether or not such draft was actually used or completed, or any "document" as otherwise described in Federal Rule of Civil Procedure 34 which is in your actual or constructive possession, custody or control.
- G. "Person" means any individual, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, group of natural persons, or any other entity.
- H. The term "identify" or "specify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Registrant, whether or not in possession of Registrant, and whether or not alleged to be privileged, including the following information:
 - 1) The present depository or depositories and the name and address of the person or persons having custody of any item to be identified unless the item is a patent, public document or person;
 - 2) If the item to be identified is a person, his or her full name, address, job title, and present employers;
 - 3) If the item to be identified is a document or paper, its character, title, date, addressee or recipient and author, signatory, or sender;
 - 4) If the item to be identified is printed material, its title, author, publication date, volume and relevant page numbers;
 - 5) If the identity sought is information about a situation or set of circumstances, all of the facts relating to or relevant to such a situation including the identity of persons with knowledge of

- such situation and the identity of all documents relating to, referring to, or otherwise pertinent to such a situation.
- 6) If the person to be identified is a corporation, or other legal entity, the laws under which it is organized, and the date of organization.
- I. The term "mark(s)" means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.
- J. The term "advertisement" means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.
- K. The term "advertising" means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.
- L. The term "media outlet" is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.
- M. If in the following Interrogatories, Document Requests and Requests for Admission, privilege is alleged as to information or materials, or if an Interrogatory, Document Request or Request for Admission is otherwise not answered in full, state the specific grounds for not answering in full, and answer said Interrogatory, Document Request or Request for Admission to the extent to which it is not objected, including the identification of all information or material for which privilege may be claimed.
- N. All questions are to be read so as to give the question the broadest possible meaning, so that, for example, when either of the terms "and" or "or" is used, it is to be construed as "and/or." Similarly use of the singular also includes the plural, use of any female pronouns also includes the male, and so forth.
- O. Unless otherwise noted, the terms "sell," "advertise," "market," and "promote" are to be interpreted as encompassing both the present act and the future intended act (e.g., "sell" shall also mean "intend to sell").
- P. Unless otherwise noted, the geographic scope of these discovery requests is limited to the United States.

INTERROGATORIES

- 1. Identify each place of business which Registrant presently maintains in connection with trademark usage or trademark licensing in the United States, and describe the type of business activities in each place of business.
- 2. Identify any assignment, license, distribution agreement, or other permitted use agreements with respect to any Products bearing the SUNKISS mark of which Registrant is aware.
- 3. Identify any United States trademark applications or registrations owned by Registrant which incorporate the term "Sunkiss."
- 4. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and Ayotte Techno-Gaz Inc are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.
- 5. Identify any assignment, license, distribution agreement, or other permitted use agreements to which Registrant and American Industrial Ovens are parties and which references the intellectual property (including but not limited to trademarks) of either or both parties.
 - 6. Identify and describe each Product Registrant sells under the SUNKISS mark.
- 7. For each Product identified in response to Interrogatory No. 6, above, identify the earliest date susceptible to proof when Registrant made such sales of that Product in the United States.
- 8. Identify the date that Registrant first used the SUNKISS mark in commerce in the United States.
- 9. For each Product identified in response to Interrogatory No. 6, identify the manufacturer or supplier from which Registrant acquires said Product.

- 10. Identify each person having knowledge of the dates and circumstances surrounding Registrant's first use and/or alleged trademark use of the SUNKISS mark in connection with each Product identified in response to Interrogatory No. 6.
- 11. Identify three individuals most knowledgeable about the nature of the Registrant's business including the advertising, marketing, manufacturing, sales and/or licensing of Products bearing the SUNKISS mark.
- 12. Identify each person having knowledge of the dates and/or circumstances surrounding Registrant's creation, adoption, and/or acquisition of the SUNKISS marks.
- 13. For each Product identified by Registrant in response to Interrogatory No. 6 as being sold under the SUNKISS mark, set forth the amount of sales in dollars in the United States for the past ten years, broken down on a yearly basis.
- 14. Identify the total amount of marketing and/or advertising expenditures for Products bearing the SUNKISS mark in the United States incurred by Registrant over the past ten years.
 - 15. Explain the significance of the term "Sunkiss" to Registrant.
- 16. Identify all third party uses, through license agreements or otherwise, of the SUNKISS mark in the United States of which Registrant is aware, including but not limited to uses of the SUNKISS mark in combination with other words, phrases or designs.
- 17. Identify and describe each Product Ayotte Techno-Gaz sells under the SUNKISS mark.
- 18. For each Product identified by Registrant in response to Interrogatory No. 17 as being sold under the SUNKISS mark, set forth the number of units sold in the United States for the past ten years, broken down on a yearly basis.

- 19. For each Product identified in response to Interrogatory No. 17, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.
- 20. Identify and describe each Product American Industrial Ovens sells under the SUNKISS mark.
- 21. For each Product identified by Registrant in response to Interrogatory No. 20 as being sold under the SUNKISS mark, set forth the number of units sold in the United States for the past ten years, broken down on a yearly basis.
- 22. For each Product identified in response to Interrogatory No. 20, identify the manufacturer or supplier from which Ayotte Techno-Gaz acquires said Product.
- 23. Identify and explain the corporate relationship, if any, between Registrant and Ayotte Techno-Gaz.
- 24. Identify and explain the corporate relationship, if any, between Registrant and American Industrial Ovens.
- 25. Identify and explain the corporate relationship, if any, between Ayotte Techno-Gaz and American Industrial Ovens.
- 26. Identify all outlets through which third-parties sell Products under the SUNKISS mark. Identify any assignment, license, distribution agreement, or other permitted use agreements with respect to any Products bearing the SUNKISS mark of which Registrant is aware.
- 27. Identify any websites through which Registrant currently advertises or sells Products bearing the SUNKISS mark.
- 28. Identify any other marks incorporating the term "Sunkiss" which Registrant has used in connection with the sale, advertisement, or promotion of goods or services.

29. For each mark identified in response to the preceding Interrogatory, identify the

products and services sold, advertised and/or marketed by Registrant under that mark.

30. Identify all other uses by Registrant of term "Sunkiss," alone or in combination with

other elements.

31. Identify all persons who have participated in any way in the preparation of the

answer or responses to these Interrogatories. If more than one individual is identified, state

specifically, with reference to Interrogatory numbers, the areas of participation of each such

person.

Respectfully Submitted,

By:

Jess M. Collen Kristen A. Mogavero COLLEN *IP* THE HOLYOKE-MANHATTAN BUILDING 80 South Highland Avenue Ossining, NY 10562 (914) 941-5668 Tel. (914) 941-6091 Fax

Counsel for Petitioner FINAM

Date: June 16, 2014

CERTIFICATE OF SERVICE

I, <u>Meaghan C. Machcinski</u>, hereby certify that on June 16th, 2015, I caused true and correct copies of "Petitioner's First Set of Interrogatories," "Petitioner's First Requests for the Production of Documents and Things," and "Petitioner's First Set of Requests for Admission" to be served upon Registrant's Attorney of Record at the following addresses:

Ms. Rebecca J. Stempien Coyle Levy & Grandinetti PO Box 18385 Washington, DC 20036-8385 mail@levygrandinetti.com

Via first-class mail, postage pre-paid and by e-mail.

Said service having taken place this 16th day of June, 2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FINAM,

Petitioner,

v.

SUNKISS THERMOREACTORS, INC.,

Registrant.

Mark: SUNKISS

Canc. No.: 92/060,849 Reg. No.: 1,200,333

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and Rule 2.120(h) of the Trademark Rules of Practice for the United States Patent and Trademark Office, Petitioner FINAM (hereafter, "Petitioner"), through its undersigned counsel, hereby requests that Registrant Sunkiss Thermoreactors, Inc. ("Registrant") make the following admissions within thirty (30) days after service of these requests.

In answering these requests for admission, Registrant is required to admit or deny each request based on information as is available to Registrant and its agents, including information in the possession of Registrant's attorneys, investigators and other representatives. For each of these requests for admission to which Registrant responds by asserting that it lacks sufficient information and/or knowledge, Registrant must state in detail the information required to answer said admission, and the steps taken by Registrant to investigate and/or obtain information in order to answer said request. These requests are deemed continuing and, to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Registrant subsequent to the service of answers hereto, Registrant is requested

promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

Please note the instructions and definitions included in the Petitioner's First Set of Interrogatories, served contemporaneously herewith, which are incorporated by reference and made a part hereof, as if fully stated herein.

REQUESTS

- 1. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are genuine pursuant to the Federal Rules of Evidence.
- 2. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are part of the business records of Registrant kept in the normal course of Registrant's business.
- 3. All documents produced by Registrant in response to Petitioner's First Set of Requests for the Production of Documents and Things in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Registrant on the grounds of relevance.
- 4. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark.
- 5. Registrant has entered into agreement(s) with one or more third parties granting Registrant the right to use the SUNKISS mark and such agreement(s) are still valid and in effect.
- 6. Registrant has entered into licensing agreement(s) granting third-parties the right to use the SUNKISS mark.

- 7. Registrant has entered into licensing agreement(s) with Ayotte Techno-Gaz, Inc. regarding use of the SUNKISS mark in the United States.
- 8. Registrant has entered into licensing agreement(s) with American Industrial Ovens regarding use of the SUNKISS mark in the United States.
- 9. All of Registrant's licensing agreements which grant a third-party the right to use the SUNKISS mark reserve Registrant's right to monitor the licensee's use of the SUNKISS mark.
- 10. All of Registrant's licensing agreements which grant a third-party the right to use the the SUNKISS mark reserve Registrant's right to inspect the licensee's use of the SUNKISS mark.
- 11. Registrant has investigated its licensees' use of the SUNKISS mark.
- 12. Registrant has monitored its licensees' use of the SUNKISS mark.
- 13. Registrant has a standard procedure for monitoring its licensees' use(s) of the SUNKISS mark.
- 14. Registrant monitors its licensees' use of the SUNKISS mark to ensure compliance with Registrant's quality control standards.
- 15. Registrant has hired a third-party to monitor its licensees' use of the SUNKISS mark to ensure that the licensees' use complies with Registrant's quality control standards.
- 16. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark reviews the licensees' use(s) of the SUNKISS mark on a regularly scheduled basis.
- 17. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark employs a standard procedure for monitoring the licensees' use of the SUNKISS mark.
- 18. The third-party hired by Registrant to monitor its licensees' use(s) of the SUNKISS mark

provides reports to Registrant regarding the licensees' use(s) of the SUNKISS mark.

- 19. Registrant does not monitor its licensees' use of the SUNKISS mark.
- 20. Registrant does not police the SUNKISS mark.
- 21. Registrant has documents evidencing Registrant's policing of the SUNKISS mark.
- 22. Registrant is aware of instances of a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
- 23. Registrant has taken steps to prevent a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
- 24. Registrant has terminated a license agreement because the licensee did not meet Registrant's quality control standards for the SUNKISS mark.
- 25. A third-party has taken steps on Registrant's behalf to prevent a licensee's use of the SUNKISS mark which does not conform to Registrant's quality control standards.
- 26. Registrant does not sell watches bearing the SUNKISS mark directly.
- 27. Registrant has authorized a licensee to manufacture goods bearing the SUNKISS mark.
- 28. Registrant has authorized a licensee to sell goods bearing the SUNKISS mark.
- 29. Registrant's only sales in the United States are through a third party.
- 30. Registration does not directly sell any goods bearing the SUNKISS mark in the United States.
- 31. Registrant has provided all evidence in its custody, control or possession which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on space heaters since 1983.
- 32. Registrant has provided all evidence in its custody, control or possession which would

support a claim that Registrant has continuously used the SUNKISS mark in commerce on air conditioners since 1983.

33. Registrant has provided all evidence in its custody, control or possession which would support a claim that Registrant has continuously used the SUNKISS mark in commerce on refrigerators since 1983.

	Respectfully Submitted,
By:	
	Jess M. Collen
	Kristen A. Mogavero
	COLLEN IP
	THE HOLYOKE-MANHATTAN BUILDING
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	Ossining, NY 10562
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	Counsel for Petitioner FINAM

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REGISTRANT'S OPPOSITION TO

PETITIONER'S MOTION FOR LEAVE TO FILE AN AMENDED PETITION FOR

CANCELLATION with Exhibits was served this date by first class mail, postage prepaid, on the Petitioner's attorneys as follows:

Ms. Kristen A. Mogavero Mr. Jess M. Collen COLLEN IP INTELLECTUAL PROPERTY LAW PC The Holyoke-Manhattan Building 80 South Highland Avenue Ossining, New York 10562

October 8, 2015
Date

/s/ Rebecca J. Stempien Coyle
Rebecca J. Stempien Coyle